Supreme Court, U.S.
FILED

No. 02 677 OCT 28 2002

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

FRANK D. PALUMBO,
Petitioner,

v.

SANFORD I. WEILL, Et Al.,

Respondent,

On Petition For Writ of Certiorari
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Frank D. Palumbo, Pro Se
P O Box 320123
Fairfield, Ct., 06430
(203) 218-9813

(a). The following are questions presented for review.

Did the United States District Court for the District of Connecticut err in closing the case, on March 20, 2001 for failure to state a claim for relief to be granted, failure to state a cause of action, failure to post a bond, and jurisdiction over state and private actors.

Did the district court err in dismissing the petitioner's complaint without allowing him to present evidence on his claims and denying relief for over 6 years, and should this Supreme Court consider the State Law Claims as well as the Constitutional claims.

(b) list of all parties to the proceeding in the court whose judgment is sought to be reviewed.

FRANK D. PALUMBO

Petitioner

v.

JOSEPH ARCUDI, CHARLES GUERRA

Defendant

SANFORD I. WEILL, JOSEPH PETRO, THOMAS UNTERBERG, DERYCK MAUGHN, ZUHARE TABARRA, JAMES W. TURRENTINE, ARTHUR MACKEY, also known as Peter Wads, DAVID GUGGENHEIM, WILLIAM KRELICK, LEE A. IACOCCA, DONALD CATA, JOAN WEILL, WILLIAM CHIARENZELLI, PAUL AUDLEY, RONALD SULLIVAN, DANIEL GARDNER, THOMAS RAGLAND, KENNETH MOUGHTH, DAVID BUCHANAN, NOEL PADDEN, JOSEPH GANIM, Mayor, THOMAS SWEENEY, ANTHONY COLONESE, JOHN SOLOMON, MARK S. BARNHARDT, ROBERT MOSSMAN, ROGER MACEY, H. RICHARD BORER, JR., MICHAEL KELLY, WILLIAM JOHNSON, ROBERT H. RUSSELL, JR. ANGELO TOSCANO, WILLIAMVONZEHLE, FREDERICK FREDERICK L. LISMAN, THOMAS FLAHERTY, LOUIS A LEVECCHIA, WILLIAM GRIZE, EDWARDS SUPER MARKET, CARMINE IAPALUCCIO, DANIEL MIGLIO, BERNARD MARCU, DAVID SAAD, SYLVESTER COCIVI, also known as Buster Cocivi, MARGARET CASTELUCCI, ANDREW DIJAK, PETER CARINI, FRANCES PALUMBO, DARREN PALUMBO, PAUL LIAPPLE, HANK MCINERNEY, ROBERT J. EATON, MICHAEL, LALROCCA, CARL WYSOPAL, WILLIAM ROGERS, WARREN JOBLIN, RICHARD S. GOUGH, PETER WADS, STEPHEN PRUDENTE, JUDY PALUMBO, IRVING GORDON, RONALD WHITE, HARRY RICHARDSON, PETER CARINI

Defendant

(c). TABLE OF CONTENTS PAGE

(a) Questions presented for Review..... i
(b) List of all Parties to the proceedings..... ii
(c) Table of Contents..... .... iii-iv
Table of cited authorities.....v
(d) Citations of the Official and Unofficial Report....vi
(e) Jurisdiction.....vii
(i) Summary Order & Order..... vii
(ii) Petition for Panel Rehearing.....vii
(a) Appeal to the Second Circuit..... vii
(b) Denial for Reconsideration..... vii
(c) Motion for Reconsideration.....vii
(d) Judgment to Close Case..... vii
(iii) Rule 12.5 reliance..... vii
(iv) Title 42 Section 1983, Title 29 Section..... . 1
1367
(f) Constitutional Provisions Treaties & Statutes.....1
(g) Concise Statement of the case..... 2-4
(h) Concise Argument for the allowance of..... 5
the writ..... 5
(a)Concise Argument for granting Writ 6-9
(b)Summary of Argument for Granting Writ... 9

APPENDIX Of Petitioner.....10
(i) opinions, orders, findings, conclusions of law.
(a) Opinion of USCA for Fifth Circuit
Walker v South Central Bell 904 F.2d ... 11-17
276, 277
(b) Opinion of USCA for 2nd Circuit
Fiacco v. Rensselaer, N.Y. 783 F.2d 17-41
(c) Opinion of the US Supreme Court,
Monell v. New York City Dept. of.....41-109
Social Services, 436 U.S. Certiorari
to the United States Court of Appeals

(d) Opinion United States Dist. Court
E. D. Pennsylvania *Tauss v. Riizzo*..... 109-113
No. 73-808
(d) Opinion of the United States
Supreme Court *United States v. Price*... 114-140
383 U. S. 794-795
Jurisdictional Statement.....141
Material Required by Sub par. 1f
(a) *Palumbo v. Weill, et al*
No. 3:98Cv1411(JBA) Judgment.....142-161
(b) *Palumbo v. Weill, et al.*, Notice of
Appeal, No.3:98CV1411(JBA).....162-165
(c) Summary Order United States.....166-167
Court of Appeals Second Circuit,
No. 01-7942
(d) Denial of Panel Rehearing 168-169
Ordered United States Court of
Appeals for the Second Circuit
No. 01-7942

OATH OF AFFIRMATION (Not included in the appendix or
The Booklet, Forwarded separately)

CERTIFICATE OF SERVICE (Not included in the appendix or
The Booklet, Forwarded separately)

TABLE OF AUTHORITIES

Page

Adickes v. S. H. Kress & Co. 398 U.S. 144.....111
167-168 (1970)

Burton v. Wilmington Parking Authority,.....*9*
305 U.S. 715

Conley v. Gibson, 355 U.S. 41,45-46 (1957)

Cottrell, Ltd v. Biotrol Int'. Inc., 191 F.3d
1248, 1251 (10th Cir.1999)..... .6

Dioguardi v. Durning, 139 F2d 774 (CA2 1944).....7

Fiacco v. City of Rennsselaer, N. Y. 783 F2d 327.....17

Haines v. Kerner, 404 U.S. .....6.

Monel v. New York City Dept of Social Services, 41
436 U.S. 690 (1977)

Moor v. County of Alameda, 411 U. S. 693 93 112
S.Ct. 1785 36L.Ed.2d 596.

Tauss v. Rizzo, 361 F.Sup 1198 (1971)..... .109

United States v. Price, 383 U.S. 794 795 (1966)... ...114

Walker v. South Cent. Bell Tell Co. 904 F2d.....11
276 277 (5th Cir. 1990)

(d). Citations of the official and unofficial reports of the opinions and order entered in the case by courts or administrative agencies.

A petition for panel rehearing to the United States Court of Appeals for the Second Circuit, was filed on July 1, 2002. Petition for Panel Rehearing, *Palumbo v. Weill,* Civil No. 01-7942. Petition for panel rehearing is **DENIED, July 30, 2002.** The opinion can be found in the Petitioner's appendix.

The Summary Order of the United States Court of Appeals for the Second Circuit was filed on June 18, 2002, Unofficial Order, can be found in the appendix. *Palumbo v. Weill,* Civil No. 01-7942. Appeal from judgment of the United States District Court for the District of Connecticut. "It is Hereby ordered, adjudged, and decreed that of said District Court be and is **AFFIRMED."**

Notice of Appeal to the United States Court of Appeals for the Second District, dated August 9, 2001. *Palumbo v. Weill,* Civil No. 01-7942

The Ruling on Pending Motions of the United States District Court for the District of Connecticut was filed on August 3, 2001, *Palumbo v. Weill,* Civil No. 3:98CVO1411(JBA) on Motions; for Reconsideration, Motion for Intent to Take Possession and Motion for Injunctive Relief were **DENIED.**

Motion for Reconsideration to the United States District Court for the District of Connecticut, dated April 3, 2001. *Palumbo v. Weill,Civil No.* 3:98CV1411(JBA)

The Judgment of the United States District Court for the District of Connecticut, March 20, 2001, "**ORDERED AND ADJUDGED** for all defendants and the case is **CLOSED**; Ruling on Pending Motions, dated March 20, 2001,Approving and Adopting Recommended Ruling by Magistrate Judge Garfinkel's Motions to Dismiss. *Palumbo v. Weill,* Civil No. 3:98CVO1411(JBA).

(e) Jurisdiction. A concise statement of the basis for jurisdiction in this Court.

This is Certiorari to the United States Court of Appeals for the Second Circuit. Jurisdiction rests upon Federal Rules of Civil Procedure Rule 8(a) (2), Second Amended Complaint, Rule 12(b) (6) Failure to state a claim for relief to be granted. Liability for Constitutional Violations; for Municipal Officials, and Private Actors. Federal Rule of Civil Procedure Rule 41 28 U.S.C.A. *United States v. Price* 383 U.S. 787 (1965); *Fiacco v. City of Rennselaer* 783 F.2d 327 (1966); Monel v. New York City Dept. of Social Services, 436 U.S. 690 (1977). The time factor upon which jurisdiction rests is determined upon the appeal of the final Judgment of the entire case.

(i) "SUMMARY ORDER" Affirming the Judgment of the District Court. June 18, 2002. *United States Court of Appeals For the Second Circuit,* No. 01-7942. Petitioner.

"Order" Petition for Panel Rehearing Denied July 30, 2002. *United States Court of Appeals For the Second Circuit,* No. 01-7942 Petitioner.

(ii) "Petition for Rehearing" July 1, 2002, *United States Court of Appeals For the Second Circuit.* No. 01-7942. Petitioner.

(a) Plaintiff appeals to the United States Court of Appeals for the Second Circuit, on August 9, 2001. *Palumbo v. Weill,* 3:98cv1411(JBA)

(b) District Court denies Motion for Reconsideration on August 3, 2001. *Palumbo v. Weill,* 3:98cv1411(JBA)

(c) Plaintiff files motion for reconsideration on April 3, 2001. *Palumbo v. Weill,* 3:98cv1411(JBA).

(d) District Court issues Judgment to close the case for all Defendants on March 20, 2001. *Palumbo v. Weill,* 3:98cv1411(JBA).

(iii) No reliance on Rule 12.5

(iv) The statutory provisions to Confer jurisdiction on the United States Supreme Court, Title 42 U.S.C. S. Section 1983, and Title 28 Section 1367. Supreme Court; time for appeal or certiorari; docketing; stay (c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree.

(v) No requirements for Rule 29

(f) Federal Statute covering fee, Title 28 Section 1917 District Court's fee on filing notice of or petition for appeal. Upon the filing of a writ of certiorari $5 shall be paid to the clerk of the district court, by the appellant or petitioner. Federal Rules of Civil Procedure 12(b)(6) Failure to state a claim for relief to be granted. Title 28 Section 1919 District Courts; dismissal for lack of jurisdiction. *United States v. Price,* 383 U.S. 794 (1966). See appendix pages 114-140.

(h). Concise statement of the case.

The plaintiff Frank Palumbo a citizen of Fairfield, Connecticut, on July 20, 1998, filed a federal complaint against 61 defendants in the United States District Court for the District of Connecticut, Case No. 3:98CVO1411(JBA). For the deprivation of rights under the 4th and 5th Amendments to the United States Constitution, State law claims for Intentional Infliction of Mental Distress, Negligent Infliction of Mental Distress, Negligence, Violation of a Contract. Demanding $134.7 Billion dollars, a jury demand. The plaintiff claim for relief; was to be free and clear from the deprivations; of the 4th Amendment and the 14th Amendment to the United States Constitution. On August 28, 1998, Defendants Arcudi and Gough filed a motion for preargument conference, to request dismissal of the complaint pursuant to Fed.R.of Civ. P 12(b)(1) Subject matter jurisdiction. The plaintiff on September 2, 1998 objected to the preargument conference/dismissal pleading Article III Section 2 [1]. The court on September 1, 1998 granted the motion for preargument conference, a telephonic conference for September 22, 1998. Various defendants filed motions for $500.00 surety bond. September 15, the court ordered a Scheduling Order; waiving the pre-filing conference, ordering the defendants intending to file a motion addresses to the pleadings must file motion no later than October 5, 1998, plaintiff's opposition is due by November 2, 1998, and to file motion for extension of time if response is substantial. The defendants filed motions to dismiss under Rule 12(b)(1) Subject matter jurisdiction and 12(b)(6), the plaintiff filed objections to the defendants motions to dismiss. Defendant Carini filed Answer and counterclaim alleging mental distress and emotional suffering a repeat of the same state allegations of the plaintiff. The plaintiff on January 7, 1999, filed an Answer and special defense of res judicata, logical relationship between claim and counter claim. The district court dismissed the defendant Carini's counter claim on March 21, 2001.

December 21, 1998 the district court filed an endorsement order Doc

#131 granting defendants motion to dismiss. The district court refers the case Doc. #130 to the Magistrate Judge William I. Garfinkel for the purpose of Recommended Ruling on pending motion to dismiss. Magistrate Judge William Garfinkel, Doc. #167, February 5, 1999, references the referral of Honorable Judge Janet Bond Arterton to the Magistrate Judge, and for courtesy copies to be forwarded to his chambers. Plaintiff files motion to enjoin the Fairfield Police, Fire Department, and Ambulance from blasting their sirens during all hours of the night. Magistrate Judge William I. Garfinkel issues Endorsement order, grants the moving defendants motion to dismiss (Docs. #47, 50, 56, 58, 62, 64, 70, 101, 115, 119, 126, 132, 151, 157 and 162, and denied plaintiff's motion for Summary Judgment as moot. The District Court, Doc. # 233 issues Recommended Ruling September 28, 1999, Dismissing for 1. Insufficiency of Service, 2.Dismissal for Failure to Post a Bond. Dismissal for failure to state claim, lack of Subject Matter jurisdiction and/or compliance with Fed R. Civ P. 8(a), the District Court also orders in light of the Plaintiff's pro se status, plaintiff will be permitted one final opportunity to file an amended complaint no later then October 30, 1999, state clearly as to each defendant, when and how that defendant has violated plaintiff's rights under the Constitution. Post bond no later than October 15, 1999. The plaintiff filed a motion to amend complaint, Doc. #237 on October 25, 1999 on twenty defendants in compliance with Doc. #233. The district court issued a ruling on pending motions, Doc. #362 ordering the defendants to dismiss directed at the operative complaint, no later than July 30, 2000. Plaintiff is again ordered to file objections before August 23, 2000. Plaintiff files motion for preliminary injunctive relief to stop partition action at the state superior court Doc. #361. Plaintiff files Motion to Compel Frances Palumbo (sister-in-law) of the plaintiff to come forward to testify under oath on the murder of Lucille Palumbo. District court issues order to show cause why court should not abstain from deciding motion for preliminary injunction relief. Doc. #364. Plaintiff motion for Intent to Take Possession of the

bidders deposit on his personal property, for failure to purchase Property in 30 days. Plaintiff file motion for preliminary injunctive relief to stop the possession and ejectment order issued by the Superior Court. The Superior Court lacked jurisdiction for a partition action, Filed April 23, 2001. The Superior Court issues a Notice of Judgment for Partition by Sale on August 7, 2000, Superior Court commits fraud, their being no motion on the short calendar for judgment of partition, the committee takes possession on April 23, 2001, and fraudulently conveys title for a foreclosure by Sale on August 7, 2000; [Superior Court lacked jurisdiction and never rendered a judgment]. The District Court issues a Ruling on Pending Motions on March 20, 2001. The District Court issues a Judgment is entered for all defendants and the case is closed on March 21, 2001. The plaintiff files a motion for reconsideration on April 3, 2001. The District Court issues endorsement Order Doc. #367 to deny the motion for intent to take possession. The plaintiff filed a brief for plaintiff's motion for reconsideration May 7, 2001.

On August 3, 2001,the district court issues ruling on pending motions and denies the motion for reconsideration. On August 9, 2001, the petitioner filed Notice of Appeal, the United States Court of Appeals for the Second circuit. The petitioner filed his Brief on October 29,2001. The petitioner gave his oral argument at the United States Court of Appeals for the Second Circuit on Friday June 14, 2001, the petitioner was unopposed, defendants did not appear for oral argument. June 18, 2001 the United States Court of Appeals for the Second Circuit filed a Summary Order, Affirmed the decision of the District Court. The petitioner filed petition for Panel Rehearing on July 1, 2000. On July 30, 2002, the United States Court of Appeals For the Second Circuit, Present: Honorable Circuit Judges Roger J. Miner, Jose A Cabranes, and Rosemary S. Pooler, Denied the petition.

(h) Consideration Governing Rule on Certiorari

United States District Court has decided an important federal Question in a way that conflicts with decisions of other United United States District Courts, and the United States Court of Appeals for the Second Circuit has affirmed an important federal Question in a way that conflicts with relevant decisions of this Court.

(a) Concise Argument for Granting the Writ

The plaintiff has been through the court systems for the past eleven years, trying to obtain relief; the Probate Court, Superior Court, United States District Court and most recently the United States Court of Appeals for the Second Circuit. The court dismissed the case pursuant to Fed R. Civ P 12(b)(6) "should be granted if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."
"Granting defendants motion to dismiss is a harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading, but also in the interest of justice." See *Cottrell Lts. V. Biotrol Int'l, Inc., 191 F.3d 1248, 1251(10th Cir. 1999)*
The decision below precisely conflicts with this Court's decisions And should be reversed. The Supreme Court of the United States Has a different view on motions to dismiss for Fed R. of Civ. P. 12(b)(6). In *Haines v. Kerner,* the Supreme Court took a different point of view "We granted certiorari and appointed counsel to represent petitioner, The only issue now before us is petitioner's contention that the District Court erred in dismissing his pro se complaint without allowing him to present evidence on his claims. Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted

by petitioner, however inartfully pleaded, are sufficient to call for The opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the *pro se* complaint, which We hold to less stringent standards than formal pleadings drafted By lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to Relief." *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957). See *Dioguardi v. Durning,* 139 F.2d 774 (CA2 1944). Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof. The judgment is reversed and the case is remanded for further proceedings consistent herewith. Note: See opinion in he appendix of opinions. In *Investors Syndicate v. City of Indiana Rocks Beach, Fla.* 434 F.2d 871, 876 (5th Cir. 1970): "The basic legal tenets governing a appellate review of a trial court's . . . dismissal on the pleadings may be characterized as truisms, the they are so critical that they warrant repetition until they become rote. The Motion to Dismiss under Fed R. Civ. P. 12(b)(6) admits all well-pleaded facts in the complaint which it challenges . . . However, consistent with today's practice favoring disposition on the merits, a court must go much further than merely accepting the fact of the complaint."

The District Court also dismissed the complaint for "failure to state a Cause of action" "Under the new rules of civil procedure, there is no pleading requirement of stating "facts sufficient to construe a cause of action" but only that there be "a short and plain statement of the claim showing that the pleader is entitled to relief. See *Dioguardi v. Durning,* 139 F2d 774 CA2 1944). "Prior to the enactment of the Federal Rules of Civil Procedure the "complaint not only gave notice of the nature of the plaintiff's case but also was required to state the facts constituting the cause of action." 5 *Federal Practice and Procedure* 1202. The federal rules have dropped the requirement that the pleadings state the facts constituting the cause of action and insist merely on notice because there are other rules which may be used to winnow factually

groundless claims. 5 *Federal Practice and Procedure Sections* 1202, 1216

As to Municipal liability for Constitutional Liability, the court below Construed the claims brought are pursuant to 42 U.S.C. Section 1983, See *Turpin v. Mailet,* 591 F.2d 426, 427 (2d 1979). The petitioner's complaint brought suit against the defendants in their official capacity and individual capacity [except for defendant Solomon and defendant Sweeney, suit was brought against these defendants in their official capacity]. "In addition that history confirms that local governments were intended to be included among the "persons" to which section 1983 applies. Accordingly, *Monroe v. Pape* is overruled insofar as it holds that local governments are wholly immune from suit under section 1983. Pp. 664-689. *Monroe v. Pape,* 365 U.S. 167. Local governing bodies (and local officials sued in their official capacities) can, therefore, be sued directly under section 1983 for monetary, declaratory, and injunctive Relief in those situations where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordnance , regulation, or acts may fairly be said to represent official policy. In addition, local governments, like every other section 1983 "person." May be sued for constitutional deprivations visited pursuant to governmental "custom" eventhough such custom has not received formal approval through the government's official decision making channels Pp. 690-691. See *Monell v. V. New York City Dept of Social Services,* 436 U.S. 690 (1977). "In addition by 1871, it was well understood that corporations should be treated as natural persons for virtually all purposes of constitutional and statutory analysis. This had not always been so. See *Monell v. New York City Dept, supra.* "On the other hand, the language of section 1983 read against the background of the same legislative history, compels the conclusion that congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, we conclude that a municipality cannot be held liable solely because it employs a tortfeasor-or, in other words, a municipality cannot be held liable

under section 1983 on a *respondeat superior* theory. See *Monell,* Page 75 in appendix. Mayor could be sued in his private capacity In civil rights action allegations that all defendants conspired to deprive plaintiff conspired to deprive plaintiff of federally protected rights. *Roger Tauss v. Frank I. Izzo,* 361 F. Suppp 1196 (1971) "Although city is not person within meaning of 42 U.S.C. Section 1985 action against city on principle of common law based on doctrine of Respondeat Superior involving action of City's mayor and police officials is proper." Some of the defendants were sued in their private capacities as well as their official capacities.

In *Burton v. Wilmington Parking Authority,* 365 U.S. 715 "We held that there is "State Action" whenever the "State has so far insinuated itself into a position of interdependence [with the otherwise 'private' Person whose conduct is said to violate the Fourteenth Amendment] ... that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so'purely' private' as to fall without the scope of the Fourteenth Amendment." 365 U.S. at 725, *Ct. Pennsylvania v. Board of Trust,* 353 U.S. 230, *Evans v. Newton,* 382 U.S. 298; *Peterson v. City of Greenville,* 373 U.S. 244, *Lombard v. Louisiana,* 373 U.S. 267. "The involvement of a state official in such a conspiracy plainly provides that state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights, whether or not the actions of the police were officially authorized or lawful; * * * Moreover, a private party involved in such a conspiracy, even though not an official of the State, can be liable under section 1983. 'Private persons, jointly engaged with state officials in the prohibited action are acting "under color" of law for purposes of the statute * * * It is enough that he is a willful participating in joint activity with the State or its agents. See *Tauss v. Rizzo 361 F Sup 1198 (1971)*

The Supreme Court disagreed with the District Court as to the dismissal as against the non official defendants. *United States v. Price,* 383 U.S. 794, 795 (1966). 6"... where police take matter in

their own hands, seize victims, beat and pound them until they confess, there cannot be the slightest doubt that the police have deprived the victim of a right under the Constitution. It is the right of the accused to be tried by a legally constituted court, not by a kangaroo court." *Williams* II, 341 U.S., at 101. Those who took advantage of participation. In effect, if the allegations are true, they were participants in official lawlessness, acting in willful concert with state officers and hence under color of law.

But we cannot agree that the Second, Third or Fourth Counts may be dismissed as against the non official defendants. Section 242 applies only where a person indicted has acted "under color" of law. Private persons, jointly engage with state officials in the prohibited action; are acting "under color" of law for purposes of the statute.

(b) **Summary Argument for Granting Writ**

In *Walker v. South Central Bell Tel. Co.* 904F.2d 276, the Circuit Court argues Fed R.Civ. P. 8(a) standard. "First, the pleadings must provide notice of the circumstances which give rise to the claim. Second, the pleader must set forth sufficient information to outline the elements of the claim or to permit an inference to be drawn that these elements exist." The petitioner provided notice of the claim, in the original complaint; the petitioner claimed "intentional infliction of emotional distress and Negligent infliction of emotional distress. The defendants used the tactics of Gobbles and Hitler, to scandalize the petitioner's name through false propaganda, and used a red herring with a decoy, to conceal their true objective and goal. "There is no probable cause in a scandal, only the workings of a warped and twisted mind."

The District Court refers to *Wabun-inini v. Sessions,* 900F.2d as a possible Fourth Amendment violation, if it could be proved that defendant Sambrook was personally involved when the Westport and Fairfield Police departments took photographs from Photo Quick.

No.

In The

Supreme Court of the United States

Frank D. Palumbo

Petitioner,

Vs.

Sanford I. Weill, et al,

Defendant.

On Petition for Writ of Certiorari

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI
APPENDIX OF PETITIONER

Frank D. Palumbo, Pro Se
P O Box 320123
Fairfield, Ct., 06430
(203)218-9813

(I) the opinions, orders, findings of fact, and conclusions of law.

The following opinions were taken from; In the United States Court of Appeals for the Fifth Circuit, No. 89-4753, *Walker v. South Central Bell Telephone Co.,* 904 F.2d 277

Before Gee, Williams and Duhe, Circuit Judges.

PER CURIAM:

Gloria Walker sued South Central Bell Telephone Company (SCB) under 42 U.S.C. Section 1981 and for intentional infliction of emotional distress under state law. Walker alleges that she worked ten years for SCB and claims that she was wrongfully discharged when it was discovered that she lied on her application form concerning her prior criminal record. Walker is black and alleges that white employees who lied about their criminal records were not fired.

[1] The district court dismissed her complaint under Fed.R.Civ.P. 12(b)(6). A dismissal under 12(b)(6) presents a purely legal issue which is reviewed de novo. *Leidholdt v. L.F.P. Inc.,* 860 F2d 890, 893 (9th Cir. 1988) *cert. denied,* ___ *U.S.* ___ 109 S.Ct. 1532, 103 L.Ed.2d 837 (1989. We affirm the district court's dismissal of the appellant's 42 U.S.C. section 1981 claim but reverse the dismissal of her state law claim for intentional infliction of emotional distress.[1]

42 U. S. C. 1981

In *Investors Syndicate v. City of Indiana Rocks Beach, Fla.,* 434 F2d 871, 876 (5th Cir. 1970) we stated.:

The basic legal tenets governing appellate review of a trial court's ....dismissal on the pleadings may be characterized as truisms, yet they are so critical that they warrant repetition until they become rote. The Motion to Dismiss under Fed.R. Civ. P. 12(b)(6) admits all well-pleaded facts in the complaint which it challenges... However, consistent with today's practice favoring disposition on the merits, a court must go much further than merely accepting the

facts of the complaint. In the case of *Conley v. Gibson,* 355 U.S. 41, 78 S.Ct. 99. 2L.Ed.2d 80 (1957) the Supreme Court restated this emphatic requirement; 'in appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' 355 U.S. at 45-46, 78 S.Ct. at 101-02.

[2] The appellant claims that she was fired for lying on her employment application regarding her criminal record whereas mendacious white worker with criminal records were not fired. Assuming as we must, that this claim is true, if fails to state a cause of action under 42 U.S.C. section 1981. In *Patterson v McLean Credit Union,* ____*U.S.*____, 109 S. Ct. 2363, 2372, 105 L.Ed.2d 132 (1989) the court held that section 1981 only prohibits discrimination in the making and enforcement of contracts. "Problems that may arise later from the conditions of continuing employment" are not actionable under section 1981. *Id.,* 109 S. Ct. at 2372. Since the instant dispute arose after the contract, section 1981 does afford the appellant a remedy.

Intentional Infliction of Emotional Distress

A pleading may fail to state a claim upon which relief may be granted for one of two reasons. First, the laws simply may not afford relief on the basis of the facts alleged in the complaint. Walker's

1. The appellee make the novel and frivolous argument that we should not address the merits of this case because the appellant waived her right to appeal. They note that the appellant never responded to the motion to dismiss brought Pursuant to Fed.R.Civ.P. 12(b)(6) in the court below. Since as a general rule a Court of appeals will not consider an argument not made below and since the Appellant made no arguments below, then the appellant can make no Argument on appeal. The arguments we are considering, however, were Those made by the district court in dismissing the complaint. The appellant May not, of course, raise an issue which was not considered by the court Below but there is no rule which forbids her from urging that the grounds given By the district court for dismissing her complaint are wrong.

Allegations of post-employment discrimination, for example, do not constitute a cognizable claim under 42 U.S.C. Section 1981. Second, regardless of weather the plaintiff is entitled to relief, the pleadings may be so badly framed that the plaintiff is not entitled to a trial on the merits. It is this second ground on which the court below dismissed the plaintiff's claim of intentional infliction of emotional distress.

Fed R.Civ.P. 8(a) provides the standard by which the adequacy of the pleadings is tested. 5 Wright and Miller, *Federal Practice and Procedure* section 1356 (1969). Rule 8 requires a "short and plain statement of the claim showing that the pleader is entitled to relief." A complaint may be inadequate in one of two fashions. First, the pleadings must provide notice of the circumstances which give rise to the claim. *Conley,* 355 U.S. at 47-48, 78 S.Ct. at 102-03 and 5 *Federal Practice and Procedure* section 1202. Second, the "pleader must set forth sufficient information to outline the elements of his claim or to permit inferences to be drawn that these elements exist." 5 *Federal Practice and Procedure* section 1216, See *In re Plywood Antitrust Litigation,* 655 F.2d 627 641 (5th Cir.Unit A 191), *cert. granted,* 456 U. S. 971, 102 S.Ct. 2232, 72 L.Ed.2d 844 (1982), *cert. dismissed,* 462 U.S. 1125, 103 S.Ct. 3100, 77 L.Ed2d 1358 (1983) and *Arthur H. Richland Co. v. Harper,* 302 F.2d 324, 325 (5th Cir. 1962).

[3] It is clear that the appellant provided notice of her claim. Count 16 of the complaint "asserts a ... claim for intentional infliction of emotional injury." If the complaint had alleged nothing further, it would have failed to provide notice. A complaint which contains a bare bones allegation that a wrong occurred and which does not plead any of the facts giving rise to the injury, does not provide adequate notice. *See, e.g., Duncan v. AT & T Communications Inc.,* 668 F. Supp. 232 (S.D.N.Y.1987). The rest of the complaint gives further details, however, and provides notice that this alleged wrong occurred when the appellant was fired.

The court below concluded that the complaint was inadequate because it did not contain all the elements of the claim. The court stated "Recovery for intentional infliction of mental distress is generally limited to instances of outrageous conduct..... Thus, the plaintiff's complaint must allege enough facts to show that . . . [the defendant's] conduct was done in such a manner which was outrageous . . . Outrageous conduct has been denied as 'Conduct which ... [goes] beyond all possible bounds of decency, and [is] regarded as atrocious, and utterly intolerable in a civilized community." R. at 57 (quoting *Muslow v. A.G. Edwards & Sons, Inc.*, 509 So.2d 1012, 1020 (La.Ct.App.1978), *cert. denied*, 512 So.2d 1183 (La.1987)). The court dismissed the complaint because the appellant failed to plead any facts which were relevant to an element of the tort-i.e. outrageous conduct.

[4] The court below applied the wrong standard in dismissing this claim. A complaint need not outline all the elements of a claim. It must be possible, however, for an inference to be drawn that these elements exist. In reading the complaint we must be mindful that pleadings must "be construed [so] as to do substantial justice." Fed. R. Civ. P. 8(f). The federal rules object the approach the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleadings to facilitate a proper decision on the merits.

The flaw in the logic of the court below is that it considered the requirement that a pleading must outline the elements of the claim or that it permit an inference to be drawn that these elements exist to be completely distinct from the requirement that a pleading must give notice. These requirements, however, overlap to a considerable degree. Generally speaking if the pleadings provide adequate notice, then an inference may be drawn that all the elements of a cause of action exist. We reiterate: A court "must go much further than merely accept . . . the facts of the complaint" and not dismiss "unless it appears beyond doubt that the plaintiff can prove no set of facts . . . which would entitle him to relief.' "

History and policy buttress our conclusion that notice is the touchstone by which a motion to dismiss under Fed. R. Civ. P 12(b)(6) must be adjudicated. Prior to the enactment of the Federal Rules of Civil Procedure the "complaint not only gave notice of the nature of the plaintiff's case but also was required to state the facts constituting the cause of action." *5 Federal Practice and Procedure* section 1202. The federal rules have dropped the requirement that the pleadings state the facts constituting the cause of action and insist merely on notice because there are other rules which may be used to winnow factually groundless claims. 5 *Federal Practice and Procedure sections* 1202, 1216. On Remand, the appellee is, of course, free to make use of these other mechanisms to test whether the appellant's claim should go to trial.

Conclusion

The judgment of the district court is AFFIRMED in part, REVERSED in part and REMANDED.

The following opinion was taken from the United States Supreme Court, granted Certiorari, *Haines v. Kerner,* 404 U.S. 520, Certiorari to the United States Court of Appeals for the 7th Circuit.

Prisoner's *pro se* complaint seeking to recover damages for claimed physical injuries and deprivation of rights in imposing disciplinary confinement should not have been dismissed without affording him the opportunity to present evidence on his claims.

Per Curiam.

Petitioner, an inmate at the Illinois State Penitentiary, Menard, Illinois, commenced this action against the Governor of Illinois and other state officers and prison officials under the Civil Rights Act of 1871, 17 Stat. 13, 42 U.S.C. Section 1983, and 28 U.S.C. Section 1343 (3) seeking to recover damages for claimed injuries and deprivation of rights while incarcerated under a judgment not

challenged here. Petitioner's pro se complaint was premised on alleged action of prison officials placing him in solitary confinement as a disciplinary measure after he had struck another inmate on the head with a shovel following a verbal altercation. The assault by petitioner on another inmate is not denied. Petitioner's pro se complaint included general allegation of physical injuries suffered while in disciplinary confinement and denial of due process in the steps leading to that confinement. The claimed physical suffering was aggravation of a preexisting foot injury and a circulatory ailment caused by forcing him to sleep on the floor of his cell with only blankets.

The District Court granted respondents' motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the complaint for failure to state a claim upon which relief could be granted, suggesting that only under exceptional circumstances should courts inquire into the internal operations of state penitentiaries and concluding that petitioner had failed to show a deprivation of federally protected rights. The Court of Appeals affirmed, emphasizing that prison officials are vested with "wide discretion" in disciplinary matters. We granted certiorari and appointed counsel to represent petitioner. The only issue now before us is petitioner's contention that the District Court erred in dismissing his pro se complaint without allowing him to present evidence on his claims.

Whatever may be the limits on the scope of inquiry of courts . . . . . We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. " *Conley v. Gibson 355 U.S.* 41-46 (1957) *Dioguardi v. Durning,* 139 F2d 774 (1944). Accordingly, although we intimate no view whatever on the merits

of petitioner' allegations, we conclude he is entitled to an opportunity to offer proof. The judgment is reversed and the case is remanded for further proceedings consistent herewith.

Reversed and Remanded.

Mr. Justice Powell and Mr. Justice Rhenquist took no part in the consideration or decision of this case

The following was taken from the United States Court of or the Second Circuit, *Fiacco v. City of Rensselaer, N. Y.* 783 F2d 327.

Before FEINBERG, Chief Judge, KEARSE and CARDAMONE, Circuit Judges.

KEARSE, Circuit Judge.

Defendants City of Rensselaer, New York (the "City"), and its police chief James Stark (sometimes collectively "the City defendant"), and City police officers Edward Meyer and Kevin Harrington (collectively the "Officers") appeal from a final judgment of the United States District Court for the Northern District of New York, following a jury trial before Virgil Pittman, Judge, in this action brought under 42 U.S.C. section 1983 (1982). Plaintiff Mary C. Fiacco was awarded $25,000 in compensatory damages for the deprivation of her constitutional rights, plus $850.00 in compensatory damages on state law claims for injuries caused by defendants' negligence. The jury had returned a verdict awarding Fiacco $75,000 as damages for deprivation of her constitutional rights; it had awarded $1,000.00 as damages resulting from

defendants' negligence but had found Fiacco contributorily negligent to the extent of 15%. After trial, the district court entered an order granting defendants a new trial on the issue of damages unless Fiacco agreed to the remittitur. On this appeal, defendants contend chiefly (1) that the court should have directed a verdict in their favor on Fiacco's section 1983 claim because there was insufficient evidence of (a) any violation by the Officers of Fiacco's constitutional rights or (b) any policy of the City upon which municipal liability under section 1983 could be premised; (2) that the court erred in admitting against the City defendants evidence of unadjudicated claims of brutality by City policemen; and (3) that the court should have granted defendants' posttrial motion for a new trial because the jury's liability verdicts were inconsistent and against the weights of the evidence and its verdicts on damages were inconsistent. Fiacco cross-appeals, contending that the order leading to the remittitur violated her Seventh Amendment right to a jury trial and was in any event unwarranted.

For the reasons given below, we reject defendants' challenges to the judgment against them, and we dismiss Fiacco's cross-appeal.

I BACKGROUND

In the early morning hours of April 4, 1981, Fiacco was arrested by Meyer and Harrington on charges of disorderly conduct and taken to the police station. Shortly after her arrest, Fiacco suffered, inter alia, injuries to her arms and legs. Fiacco brought the present section 1983 action against the City defendants and the Officers, alleging violation of her federal constitutional rights and asserting pendent state law claims.

The complaint alleged that the Officers had used excessive force in the police station in violation of her rights under the Fifth and Fourteenth Amendments to the Constitution. As pendent state law claims, Fiacco alleged that the Officers had maliciously and

wantonly assaulted her, negligently injured her, and negligently failed to provide her with prompt medical attention for her injuries. The complaint alleged that the City defendants had violated Fiacco's constitutional right principally by negligently failing on a continuing basis, to instruct, supervise, control, and discipline the Officers with respect to the use of unreasonable and excessive force during the making of arrests. Fiacco made the same assertions as a pendent state law claim against the City defendants, and added the assertion that they had negligently failed to instruct and supervise officers in the provision of medical services for those injured during an arrest.

A. The Evidence and Verdict Against the Officers.

The case was tried to the jury in two parts; the first focusing on the allegations against the Officers and the second focusing on the allegations against the City defendants. At the first phase of trial, two substantially differing versions of the event were presented.

1. Fiacco's Version of the Events

According to Fiacco's testimony at trial, she had ended a night of heavy drinking by falling asleep in the front lawn of a home in Rensselaer. She was awakened by Meyer and Harrington, who had placed her in handcuffs and who proceeded, without any verbal or physical provocation on her part, to arrest her for disorderly conduct. Fiacco was placed in a police car and taken to the Rensselaer police station. As she attempted to exit the police car upon their arrival, Meyer poked her and she fell to the ground. Meyer then kicked her in the thighs and are and, gripping the handcuffs, dragged her along the ground. Meyer subsequently lost her grip on the handcuffs, and Fiacco attempted to run away in order to avoid being hurt further, but she was shoved from behind and fell face down on the ground. Meyer then called Fiacco "little bitch" added that she was "just like the rest of the Fiaccos," kicked her in the back and legs, and punched her, after which she was pulled, picked up, and taken into the police

station. Harrington was present during the above treatment of Fiacco by Meyer and did nothing to prevent or terminate it. After she was taken into the police station, Fiacco was booked on charges of disorderly conduct, resisting arrest, and attempting to escape, and was locked in a cell. Fiacco testified that once she was inside the police station, she made no attempt to flee and never assaulted any police officials.

Fiacco testified that while at the police station she complained that the handcuffs were too tight and were hurting her hands, but that nothing was done to loosen them. She complained as well of pain in her legs, arms, and chin, but no medical attention was given her. She also noticed that her blouse was open and her breast exposed. She remained in the condition until she taken to the Rensselaer County Jail.

Phyllis Collins, a correctional officer at the county jail, testified that after Fiacco's arrival at that jail she fixed Fiacco's blouse so that it covered her. She noticed that there were scratches and bruises on Fiacco's face and arms. Collins was present when Fiacco's handcuffs were removed, her hands were numb and she could not move the middle finger of her left hand.

Fiacco was eventually taken to a hospital emergency room where her elbows were cleaned, x-rays taken, and her left arm placed in a brace from the wrist down. Surgery was eventually performed to repair the tendon in Fiacco's finger. The doctor who performed the surgery testified that events such as those described above could have been the cause of Fiacco's injury.

2. *The officers' Version of the Events*

Meyer and Harrington offered a different account of the events surrounding Fiacco' arrest. Meyer testified that upon receiving a radio dispatch that a woman was lying unconscious in front of a certain address, he proceeded to the site, found Fiacco there, and tried to revive her. Both officers testified that when Harrington

arrived at the scene a few seconds later he radioed for an ambulance, but that either before or as it arrived, Fiacco regained consciousness, began to berate the Officers, kicked Meyer in the shoulder, and slapped Harrington in the face. Fiacco refused to get into the ambulance, and Harrington and Meyer arrested her for disorderly conduct. Fiacco was then handcuffed and taken to the police station.

Meyer testified that upon their arrival at the police station, Fiacco began screaming and spitting at Harrington and refused to get out of the car, forcing the officers to carry her from the car into the station; she continued to scream and swear at them. Harrington testified that once inside the station, Fiacco's handcuffs were taken off and she was told to wait on a bench while Harrington filled out the arrest report, Within minutes, however, Fiacco ran toward the entrance of the station where she was caught by the Officers, who returned her to the bench. Fiacco again jumped up and ran, this time exiting the building, pursued by Harrington and desk officer Alfred Syvertsen. Fiacco stumbled to the ground in the station parking lot, and Harrington and Syvertsen brought her back into the building and handcuffed her to a pipe. The Officers then noticed that Fiacco had scrapped her arms and that her blouse had loosened, exposing part of her breast. Harrington testified that the blouse was fixed and that Fiacco was offered medical assistance but decline it.

Shortly thereafter, the police department matron arrived in response to Syvertsen's call. Fiacco verbally abused the matron and attempted to kick her while they waited for a judge to arrive for Fiacco's arraignment. Throughout this period, Fiacco never requested medical attention or complained about her treatment.

3. Liability Verdict Against the Officers.

At the close of the evidence as to the events leading to Fiacco's injuries, the Officers moved for a directed verdict in their favor on the ground of insufficiency of the evidence. This motion was denied, and the jury was asked to answer special interrogatories with

respect to the liability of each of the Officer. In response to these questions, the jury found that each officer had (1) deprived Fiacco of her federal constitutional rights, (2) negligently injured her, in violation of state law, and (3) negligently failed to provide her with medical attention, in violation of state law. As to each of the claims of negligence sustained by the jury, the jury found that Fiacco had negligently contributed to her own injuries.

C. *The Verdict Against the City Defendants*

Following the return of the jury's special verdict with respect to the liability of the Officers, evidence was presented with respect to Fiacco's claims against the City and Stark. In an attempt to show, as required by *Monell v. Department of Social Services,* 436 U.S. 658, 694, 98 S.Ct. 2018, 2037, 56 L.Ed.2d 611 (1978)), that her injury had been caused by a custom or policy of the City, Fiacco introduced evidence as to the City's official procedures for handling claims of police brutality and, over defendants' objection, evidence as to claims of such brutality lodged by third parties against the City during the five year period proceeding Fiacco's arrest. The latter evidence, described in greater detail in part III.B.2 below, consisted principally of notices of claims that had been filed against the City alleging police brutality, the testimony of several of the claimants, and the testimony of police chief Stark with respect to his handling of these complaints. Fiacco argued, inter alia, that the handling of these claims and complaints, by the City defendants demonstrated a policy of negligent supervision that rose to the level of deliberate indifference to the use by City police officers of excessive force in violation of constitutional rights.

The City defendants introduced evidence as to their training of police officers, their investigation of complaints received prior to the events involving Fiacco, and the discharge of three officers from the police force because of their misconduct. In addition, the City offered expert testimony to the effect that its policies of supervision and discipline were in accordance with acceptable police practices.

At the conclusion of the proof with respect to Fiacco's claims against the City and Stark, the City defendants moved for a directed verdict in their favor. The court granted the motion in part. As to the section 1983 claim, the court ruled that there was insufficient evidence to support Fiacco's claim that the City defendants had a policy of inadequate training of police officers; further it ruled that because none of the third-party claims had yet been adjudicated in favor of the complainants, there was insufficient evidence to support the contention that the City defendants had a policy of failing to discipline police officers. As to the state law claim, the court ruled that there was insufficient evidence to support the claim that the City defendants had negligently failed to instruct or supervise the officers with regard to the provision of medical attention. In sum, the court ruled that only two claims against the City defendants would be submitted to the jury: that part of the section 1983 claim that alleged the Fiacco's injuries resulted from a municipal policy of nonsupervision of the Officers, and the state law claim of negligent supervision of the Officers.

Accordingly, the jury was asked to answer, as to each of the City defendants, two interrogatories: (1) whether those defendants

> [e]ngaged in a course of conduct or had a policy of deliberate indifference to the supervision of the defendant police officers which proximately resulted in the deprivation of ... Fiacco's right to wit: not to be punished or not to have excessive force used against her arrest or detention without due process of law in violation of her constitutional right under the 5th and 14th Amendments and pursuant to Title 42 Section 1983.

And (2) whether the City defendants "[n]egligently failed to supervise [the Officers] which negligent supervision was a proximate cause of the injuries sustained by... Fiacco." As to both Stark and the City, the jury answered each interrogatory in the affirmative.

E. *The Damages Verdict and the Remittitur*

The jury also answered special interrogatories as to damages. It awarded Fiacco $75,000 in compensatory damages for the deprivation of her constitutional rights and $1,000 in compensatory damages for injuries cause by defendants' negligence. The jury specified the extent to which it found the negligence of each party contributed to Fiacco's injuries, finding that Fiacco had been contributorily negligent to the extent of 15%. A judgment was entered accordingly.

Following the trial and prior to the entry of this judgment, defendants had moved for a new trial pursuant to Fed.R.Civ.P. 59 on the grounds that the inability verdicts were contrary to law and against the weight of the evidence, and that the amount of the verdict on the section 1983 claim was excessive. After the initial judgment was entered, the court granted defendants' motion in part. It refused to disturb the liability verdicts but found that the amount awarded on the section 1983 claim was grossly excessive and shock[ed] the judicial conscience," and it ordered a new trial on the issue of damages unless Fiacco agreed to a remittitur in the amount of $50,000. Fiacco agreed to the remittitur, thereby reducing the award on her constitutional claim to $25,000.

While the record before us is unclear as to whether a new judgment was ever entered reflecting this lower award, the parties have proceeded as if such a judgment was entered. We will proceed on the assumption that the new judgment was entered or that one may be entered nunc pro tunc following the issuance of our mandate.

F. *Parties' Contentions on Appeal*

On this appeal, defendants have challenged the judgment against them only to the extent that it hold them liable to Fiacco for damages on her section 1983 claim; no error has been asserted with respect to the claims for negligence and negligent supervision.

As to the section 1983 claim, defendants seek entry of judgment in

their favor chiefly on the grounds that (1) the jury's answers to the special interrogatories established that the Officers had not violated any of Fiacco's federal constitutional rights but only her state law rights, (2) a pattern of negligent supervision of municipal employees, even if proven, is insufficient as a matter of law to establish the existence of the "policy" that is prerequisite to the imposition of municipal liability under section 1983; and (3) the evidence was insufficient to establish that the City had a custom or policy of negligent supervision amounting to a deliberate indifference to constitutional rights. Defendants have not argued that, if the evidence was sufficient to prove the City's deliberate indifference to constitutional rights, there was any insufficiency in the evidence that that policy *caused* the deprivation of Fiacco's constitutional rights; nor have they challenged in any respect the interrogatories put to the jury or the trial court's instructions to the jury.

Defendants also contend that, if not entitled to judgment as a matter of law, they should at least have been granted a new trial on the grounds that the admission of evidence as to third-party claims against the City was unduly prejudicial and that the jury's award of $75,000 in damages on the section 1983 claim, in light of its award of only $1,000 on the negligence claims, was inconsistent and excessive.

Fiacco has cross-appealed, contending that the conditional order of remittitur violated her Seventh Amendment right to a jury trial and that, in any event, given the weight of the evidence, the order was an abuse of discretion. She seeks reinstatement of the jury's award to her of $75,00 for the violation of her constitutional rights.

For the reasons below, we conclude that the trial court properly denied the motions for a directed verdict on the section 1983 claim and properly denied the motion for a new trial on grounds other than the excessiveness of the damage award. We also conclude that Fiacco, having accepted the remittitur, is precluded from challenging

on appeal the amount finally awarded to her.

II. THE LIABILITY OF THE OFFICERS

The Officers' principal contention on this appeal is that the verdict of the jury finding them liable to Fiacco for violation of her constitutional rights must be set aside because it is inconsistent with its verdict that they did not maliciously and wantonly assault Fiacco in violation of state law. They argue that the latter finding requires the inference that the jury adopted the Officers' version of the events and that the jury must have found that Fiacco caused her own injuries by stumbling to the ground in an attempted escape. We find no merit in this contention.

[1] When a claim is made that a jury's answers to special interrogatories are inconsistent, our responsibility as a reviewing court is to adopt a view of the case, if there is one, that resolves any seeming inconsistency. See *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.* 369 U.S. 355, 364, 82 S.Ct. 780,786, 7 L.Ed.2d 798 (1962) ("Where there is a view of the case that makes the jury's answers to special interrogatories consistent, they must be resolved that way.") *Martell v. Boardwalk Enterprises, Inc.*, 748 F.2d 740 748 (2d. Cir 1984). Bearing in mind that the jury was entitled to believe parts of the testimony of any given witness, we have little difficulty in concluding that there is a view of the case that adequately explains the jury's answers to all of the questions as to the Officers' liability.

[2] The first interrogatories asked whether either of the Officers (1) "(d)eprived...Fiacco of her Constitutional rights in the federal claim pursuant to Title 42, Section 1983"; or (2) "[m]aliciously and wantonmly [sic] assaulted... Fiaco [sic] under the laws of the State of New York." The differing language of these interrogatories suggests a rational basis on which the jury may have answered the first in the affirmative and the second in the negative. The second interrogatory required, for an affirmative answer, that the jury find that any assault on Fiacco was malicious. No such language was

included in the first interrogatory, and the instructions given to the jury with respect to the section 1983 claim made clear that a finding of malice was not a prerequisite to a verdict in favor of Fiacco on that claim. The jury was instructed that although a police officer has the right to use such force as is necessary under the circumstances to effect a lawful arrest, he is not entitled to use force that is unreasonable, unnecessary, or violent; it was instructed that if it found that Fiacco had proven by a preponderance of the evidence that either of the Officers had committed the acts she alleged and that the force used was excessive, it was to find in favor of Fiacco unless it found that the defendants had established a defense of good faith. As to the latter issue, the court instructed the jury that it could not find that defense established if it concluded that the Officer in question either (a) maliciously intended to deprive Fiacco of her constitutional rights or (b) knew or reasonably should have known that his actions would violate her clearly established constitutional rights.

Within the framework of these instructions and the language of the interrogatories, the jury could have found that the Officers had used excessive force against Fiacco in violation of her constitutional rights, and that they should have known that they were violating those rights. But that their acts were not malicious. Viewed in this light, the jury's answers to the interrogatories finding the Officers liable to Fiacco for violation of her constitutional rights but not for a malicious assault are not inconsistent. Accordingly, we see no basis on which to disturb the jury's liability verdict against the Officer on the section 1983 claim.

[3] First, Fiacco's theory is not that the City intended to engage in unintentional conduct. Rather it is that the City was knowingly and deliberately indifferent to the possibility that its police officers were wont to use excessive force and that this indifference was

demonstrated by the failure of the City defendants exercise reasonable care in investigating claims of police brutality in order to supervise the officers in the proper use of force. We see no logical flaw in such a hypothesis, and we reject the notion advanced by the City defendant s that a municipality may not be held liable under section 1983 on a basis of a police of deliberate indifference to the constitutional rights of persons within its domain.

[4] Nor are we persuaded by the City defendants; suggestion that a municipal policy that is not itself unconstitutional but that merely permits or tolerates unconstitutional acts by city employees cannot be the basis for municipal liability under section 1983. For this argument the City defendants rely on a footnote in the plurality opinion in Tuttle, in which four Justices "express[ed] no opinion on whether a policy that itself is not unconstitutional, such as the general inadequate training' alleged here, can ever meet the 'policy' requirement of *Monell," Id.* at 2436 n.7. Notwithstanding this reservation of view, we think the text of the plurality opinion implies that a policy that is not itself unconstitutional may provide the basis for municipal liability. The question resolved in Tuttle was whether the existence of a policy could be inferred solely from evidence of the occurrence of a single incident, and the Court held that more evidence was required. In reaching this conclusion, the plurality opinion noted the plaintiff's contention that there was in the record additional evidence of an official policy of inadequate training but stated that "unfortunately for [plaintiff]," the court had instructed the jury that it could infer the existence of such a policy solely from evidence of the occurrence of the single incident, without any additional evidence. *Id.* at 2435. The implication of the word "unfortunately" would seem to be that if the jury had not been allowed to infer the existence of the alleged policy-itself not unconstitutional-solely from the occurrence of the single incident, the four Justices who joined this opinion would have upheld the judgment in favor of the plaintiff. Further, in emphasizing that proof of the occurrence of a single incident is not sufficient to establish the existence of an official policy, the plurality opinion went on to state that "where the policy relied upon is not itself unconstitutional, considerably more proof than the single incident will be necessary in every case to establish. . . the requisite fault on the part of the

municipality...." *Id* at 2436 (footnote 7 omitted). The concurring opinion in Tuttle indicates that three other Justices would have upheld the judgment for the plaintiff if it had been clear that the jury's finding that there was a policy of inadequate training was

based at least in part on the other evidence and not just on the evidence of the occurrence of the single incident there at issue. See *id.* at 2438 (Brennan, J., concurring). Thus, notwithstanding the plurality's reservation, it is difficult to conclude that the Court would rule that, as a matter of law, a policy that is not itself unconstitutional may not be a premise for municipal liability under section 1983.

Nor do we think there is a sound basis for a rule of law that would preclude the premising of municipal liability under section 1983 on any policy that is not itself unconstitutional. A municipality that has the responsibility to keep order and to protect the rights of those within its boundaries to be free from physical violence gives its policemen considerable power to subdue persons who would violate those rights. It cannot responsibly condone police officers' use of that power in a way that is itself lawless. It should not take a laissez-fare attitude toward the violation by its peace officers of the very rights they are supposed to prevent others from violating. A principle that would give a municipality immunity from section 1983 liability for injury caused by its deliberate indifference to its police officers' use of excessive force in violation of constitutional principle would foster the denial-both by policemen and by civilians-of the very rights the city is responsible for safeguarding. See , e.g., Traynor, Lawbreakers, Courts, and Law-Abiders, 41 Cal.St.B.J., 458, 478 (1966) (" The great advantage of police compliance with the law is that it helps to create an atmosphere conducive to a community respect for officers of the law that in turn serves to promote their enforcement of the law,""), quoted in *City of Oklahoma City v. Tuttle, 105 S.Ct. at 2447 n. 33(Stevens, J.,* dissenting).

In sum, we reject the City defendants' contentions that as a matter of logic or law their deliberate indifference, if proven, to the possible use of excessive force by city police officers was insufficient to satisfy the requirement under section 1983 that Fiacco prove that she was injured as a result of a City "policy."

B. The Admissibility and Sufficiency of the Evidence of a Policy of Deliberate Indifference

The City defendants contend that Fiacco should not have been allowed to introduce evidence of third party claims and complaints against the City and that, even with such proof in the record, the evidence was insufficient to establish a policy of negligent supervision of police officers by the City defendants rising to the level of a deliberate indifference to the violation of constitutional rights. We reject both contentions.

1. Admissibility of Third-Party Claims and Complaints.

[5,6] Fed.R.Evid. 403 grants the trial judge broad discretion to determine whether to allow the introduction of relevant, but prejudicial, matters into evidence. When the trial judge has assessed both the probative value and the likely prejudicial effect of the evidence, the reviewing court will not disturb his decision to admit or exclude evidence unless it finds an abuse of discretion. E.G., *United States v. Martinez,* 775 F.2d 31, 37 (2d Cir. 1985); *United States v. Robinson,* 560 F.2d 507, 514-15 (2d Cir. 1977 (en banc) *cert. denied.* 435 U.S. 905, 98 S.Ct. 1451 55 L.Ed2d 496 (1978)). We find no abuse of discretion here.

We have no doubt that, in the context of a theory that the City negligently supervised its officer in their use of force, the evidence that a number of claims of police brutality had been made by other

persons against the City, together with evidence as to the City's treatment of these claims, was relevant. Whether or not the claims had validity, the very assertion of a number of such claims put the City on notice that there was a possibility that its police officers had used excessive force. The City's knowledge of these allegations and the nature and extent of its efforts to investigate and record the claims were pertinent to Fiacco's contention the City had a policy of nonsupervision of its policemen that reflected a deliberate indifference to their use of excessive force. The fact that none of the claims had yet been adjudicated in favor of the claimant was not material; if the City's efforts to evaluate the claims were so superficial as to suggest that its official attitude was one of indifference to the truth of the claim, such an attitude would bespeak an indifference to the rights asserted in those claims.

Further, the value of such evidence to a plaintiff in a section 1983 action is clear. Since the existence of a policy of nonsupervision amounting to deliberate indifference to constitutional rights cannot be established by inference solely from evidence of the occurrence of the incident in question, see *City of Oklahoma City v. Tuttle; Turpin v. Mailet,* 619 F.2d 196, 202-04 (2d Cir.) *cert. denied.* 449 U.S. 1016, 101 S. Ct. 577, 66 L.Ed.2d 475 (1980), a plaintiff cannot prevail on a section 1983 Claim against a municipality without introducing other evidence. Proof that other claims were met with indifference for their truth may be one way of satisfying the plaintiffs' burden.

Given that the evidence of third –party claims was both relevant and valuable to Fiacco's case, the trial court did not abuse its discretion in determining that its probative value outweighed its possible prejudicial effect. The court properly attempted to minimize any such effect by repeatedly instructing the jury as to the limited purpose for which the evidence was admitted. The jury was instructed that there had never been any authoritative finding as to whether or not any claimant's charge was valid and that the jury was

neither to assume that the claims were true nor to try to assess their truth; rather, the jury was merely "to focus [its] attention on [whether] the chief of police and/or the city (took) sufficient steps in their supervisory capacity in handling those claims."

In all the circumstances, we conclude that there was no abuse of discretion in the trial court's decision to admit into evidence against the City Defendants proof as to the assertion of other claims of police brutality.

2. *The Sufficiency of the Evidence of a Policy of Deliberate Indifference*

The evidence presented by Fiacco to establish the existence of a policy of nonsupervision on the part of the City was of two types: evidence of the failure of the City defendants to adopt appropriate procedures to deal responsibly with complaints of police brutality, and evidence of their failure to make reasonable investigations of such complaints. The City defendants contend that the trial court Should have granted their motion for a directed verdict because this evidence was insufficient as a matter of law to establish such a policy. We disagree.

In reviewing the denial of defendants' motion for a directed verdict, we, like the trial court in ruling on the motion, must view the evidence in the light most favorable to Fiacco, giving her the benefit of all reasonable inferences that may be drawn in her favor. *See Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 82 S.Ct. 1404, 1409, 8 L.Ed.2d 777 (1962) ("The Court of Appeals was, of course, bound to view the evidence in the light most favorable to Continental [the party against whom it ruled a verdict should have been directed] and to give it the benefit of all inferences which the evidence fairly supports, even though contrary inferences might reasonably be drawn." (footnote omitted); *Croce v. Kurnit,* 737 F.2d 229k, 237 (2d Cir. 1984); 5A *Moore's Federal Practice*

par. 50-27 (2d ed. 1985). A directed verdict is proper only if "the evidence is such that, without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, there can be but one conclusion as to the verdict that reasonable men could have reached." *Simblest v. Maynard,* 427 F.2d 1,4 (2d Cir 1970). With this standard in mind, we review the evidence presented at trial.

As to the police department's own supervision of its officers with respect to the use of force; Fiacco brought out through the testimony of Stark that in early 1978 the police department had adopted general rules and regulations that were set forth in a pamphlet entitled "Duties and Rules of Conduct," issued by the Bureau of Municipal Police, Division of Criminal Justice Services (hereinafter "Duties and Rules contained the following statement with respect to the use of force by police officers:

> Use of force: Officers shall not use more force in any situation Than is reasonably necessary under the circumstances. Officers Shall use force in accordance with law and departmental Procedures.

In its commentary, the pamphlet stated:

> This section follows the general rule on use of force, i.e. use only That amount of force, i.e., use only that amount of force which is Reasonable and necessary under the circumstances. *Departmental Procedures should spell out the details for use of force.*

(Duties & Rules art. 11.25; emphasis added).) Stark testified that no written departmental procedures "spell[ing] out the details for use of force" were adopted.

As to the general framework which the City dealt with civilian complaints of police brutality, Fiacco introduced sections of the City Charter which made the City" Public Safety Board ("Board") responsible for supervision of the police department and for hearing any charges against a police officer. The Charter authorized the

Board to adopt and enforce reasonable rules for the government, discipline, and administration of police officers. Stark testified that the Board had adopted rules relating to police discipline, but that Stark had never seen them.

The Charter also established procedures to be followed by the Board in disciplinary hearing and stated that any charges filed with the Board must be in writing, in form prescribed by the Board. From its inception in 1978 through the time of Fiacco's arrest in April 1981, however, the Board provided no form on which a civilian would make a complaint against a police officer. During that period there were no hearings by the Board into any civilian claim of excessive force. Though the allegation that the City defendants had negligently failed to discipline police officers was not submitted to the jury (because the validity of claims that might have warranted such discipline had not yet been decided), Fiacco contended-and the jury could have found-that the above evidence showed that the City had in place general procedures relating to the appropriate supervision of police officers but had declined to implement them.

Finally, as to specific allegations of police brutality during the five years before the incident involving Fiacco, Fiacco introduced seven written claims that had been filed, called as witnesses four of the complainants, and elicited testimony from Stark as to his handling of complaints. The evidence relating to the five most recent claims, all made after Stark became police chief in 1977, included the following.

Daniel Terrace Malark testified that in June 1979, shortly after he had been injured in an automobile accident and was bandaged from waist to neck, he was arrested and taken to the City police station. In the course of obtaining personal data from Malark, police officers continually poked him, admonishing him to speed up his answers. When they asked Malark his social security number and he said he did not know it, defendant Meyer came to the bench where Malark

was sitting and punched him in the face. Malark's head hit the wall behind him and he sustained a concussion and injury to his eye. Malark complained to Stark. Stark testified that he did not open an investigative file with respect to this complaint. He did not take a written statement from Malark; he did not obtain a written statement from anyone else. He did not assign anyone to investigate the complaint. He did not make any notation of the complaint Meyer's file.

Robert J. Halse filed a claim against the City alleging that in July 1980 he was at his home when he was approached by a police officer who stated that he was going to arrest Halse for violation of the Vehicle and Traffic Law. The officer, without justification struck Halse in the face with his nightstick and caused him to spend the night in jail without medical attention for his injuries. Stark testified that he did not assign anyone to investigate this claim; he investigated it himself and determined that there should be no disciplinary action. It is not clear of what Stark's investigation consisted; but it did not include talking to Halse, the complainant.

Margaret Mackey testified that in August 1980 a police officer, apparently in connection with activities of Mackey's son with a go-cart, hit Mackey four times with a nightstick in order to gain entrance to her home. Mackey went to the police station to complain; while there she collapsed and had to be taken to the hospital because of the injuries she had suffered. Mackey says she thereafter complained to Stark. Stark recalled learning of the complaint but did not recall having spoken to Mackey about it. Stark did not assign anyone to investigate Mackey's complaint. He investigated it himself by simply talking to the officer accused. He concluded that the complaint was not true, apparently without having interviewed Mackey herself.

John Joseph Mellen testified that in December 1980 he was arrested and taken to the City police station. There three police officers, including defendant Meyer, kicked punched, and beat him, leaving him with two black eyes and a swollen lip. Melloen, then a

teenager, and his father went to Stark to complain. Stark testified that he recalled that Mellen had some discoloration around his eye at the time of this visit. Stark interviewed the accused officers. He did not open a file on the matter; he did not assign anyone to investigate; he did not take a written statement from Mellen; he did not check any medical records. He did check Mellen's arrest record, which was substantial; he concluded that no further investigation or action was required.

Henry Miller testified that in January 1981, while he was in a bar in the City, he was grabbed by persons who turned out to be plainclothes policemen and taken outside, where he was hit and slapped. He was handcuffed with his hands behind him, hit in the face with a nightstick, and thrown into a police car. Upon arriving at the police station, he was kicked out of the car and then lifted by the handcuffs and carried into the station. The handcuffs were fastened so tightly that they numbed his hands. Miller was then required to strip down to his shorts and remain in a cell until a new shift of officers came on duty. He complained to these officers about the treatment he had received. Neither Stark nor any other member of the police department ever asked him for a statement regarding his claim of excessive force.

Stark testified that, with respect to each claim or complaint, he had conducted as much investigation as he thought necessary. He satisfied himself with respect to each of the claims described above that no departmental rules had been violated and no disciplinary action was warranted. No hearing was held on any of these claims.

No officer was reprimanded, suspended, discharged, or demoted. With Stark's approval, Meyer, the subject of three complaints, including that of Fiacco, was promoted to sergeant.

Stark testified that in connection with certain claims not introduced by Fiacco, he had, prior to April 1981, discharged three police

officers for ue of excessive force. He acknowledged that this deposition, taken more than a year before trial, he had testified that he had never discharge anyone for the use of excessive force, and that his answers to interrogatories had failed to mention any discharges. Stark testified that the discharge of one of these men came after he had been convicted of a felony; the other men were temporary policemen, one discharged for assaulting an elderly woman in her home and the other discharged for threatening someone with his blackjack and slapstick. When questioned about his failure to mention these events at his deposition or in his interrogatory answers, Stark said that the fact that he had ever discharged anyone for the use or threat of excessive force had; until a few says before trial, " "slipped [his] mind."

The trial evidence left no doubt that the City endorsed Stark's handling of the complaints made after he became police chief. The City's mayor, who was a member of the Public Safety Boar, testified that Stark informed him by telephone of every claim. Stark never put any of these reports in writing and apparently was never requested to do so.

[7] Though the City defendants argue that this evidence was insufficient as a matter of law to establish that they had a policy of nonsupervision of police officers that amounted to a deliberate indifference to the use o by those officers of excessive force; we are unpersuaded. The evidence was sufficient to permit the jury to find that the City Charter outlined procedures for the consideration of charges against policemen, but that in the period prior to Fiacco's arrest the Public Safety Board had never implemented those procedures and had never held a hearing into a civilian complaint against a policeman. The evidence showed that within the 22 month period preceding Fiacco's arrest, five complaints were made that City police officers had used excessive force, either in making arrests or in transporting or detaining those whom they had already arrested; four of the complaints came within the ten months

preceding Fiacco's arrest. Any investigation of these charges was done by Stark himself, for he never assigned anyone else to make an investigation. Stark's sole investigative act in most instances consisted of questioning the officers accuse. In none of these instances did Stark open an investigative file or place any notation in the officer's file. In no instance was any hearing held. In no instance did Stark take a written statement from any of the five complainants. He did not even interview three of them.

Drawing all reasonable inferences in favor Fiacco, the jury could rationally have concluded that during the two years prior to Fiacco''s arrest, the City defendants' response to complaints of use of excessive force by City police officers was uninterested and superficial. It could reasonably have inferred that a response to complaints that generally consisted solely of the chief's speaking to the accused officer- with no formal statement being taken from the complainant, no file being created, no notation being made in the officer's file, and no further investigation being made-would have been viewed by the officers, and should be viewed by an objective observer, as reflecting an indifference by the City to the use of excessive force. The permissibility of this inference is not diminished by the fact that none of the claims introduced by Fiacco had yet been adjudicated in favor of the claimants. The jury was free to reason that the very failure of the City defendants to conduct a non superficial investigation into civilian claims of excessive force indicated that the City and the chief simply did not care what a thorough investigation would reveal; that they were indeed indifferent to whether or not excessive force was used.

Accordingly, we conclude that the evidence was sufficient as a matter of law to permit a rational juror to find that the City had a policy of nonsupervision of its police officers that amounted to a deliberate indifference to their use of excessive force. The trial court therefore properly denied the City defendants' motion for a directed verdict.

[8] We find no greater merit in the contention that the verdict against the City defendants was so against the weight of the evidence that the court erred in denying defendants' motion for a new trial. Such a motion is committed to the sound discretion of the trial judge, *see, e.g. Brady v. Chemical Construction Corp.*, 740 F2d 195, 200 (2d Cir. 1984); *Bevefino v. Saydjari*, 574 F.2d 676, 684 (2d Cir. 1978), and we see no abuse of discretion in refusing to overturn the jury's conclusions.

IV. DAMAGES

[9] All of the defendants attack the jury's award of damages to Fiacco on her section 1983 claim, contending that, in light of the small award made on the negligence claims ($1,000), the jury was "estopped" from making a large award of damages ($75,000, now reduced by remittiture to $25,000) on the constitutional claim. Since there are various views of the evidence that would reconcile the two Awards, we are not persuaded that the jury's verdict as to the amount of damages was inconsistent.

The jury had found for Fiacco on three categories of claims: one constitutional in dimension, one based on negligent infliction of injury, and one based on negligent failure to provide medical attention. Only two interrogatories as to the amount of damages were put to the jury, however, One asked it to assess the injury resulting from the deprivation of constitutional rights, and the other asked it to assess the injury resulting from negligence. Since the later interrogatory made no distinction between the two categories of negligence, the jury's response to it does not specify whether its $1,000 assessment was of the damage resulting from the negligent infliction of injury or the damage resulting from the negligent failure to provide medical attention to the injuries. Thus, it is conceivable that the jury found that Ficacco suffered bodily injury in the amount of $75,000 and that those injuries were aggravated to the extent of $1000 by the failure to provide her with prompt medical attention.

Further, it is possible that the jury placed a greater value on the

constitutional right than on the right to be free from negligent injury. The trial court had instructed the jury that "there will be possibly different amounts of damages [that] could be awarded with reference to the state claims," and that in assessing the injury flowing from the constitutional deprivation, the jury might "wish to consider the importance of the right in our system of government, the role which this right has played in the history of our republic, and the significance of the right in the context of activities which the Plaintiff was engaged in at the time of the violation of the right."

Thus, the jury may well have placed a high value on the constitutional right to be free from the use of excessive force but found that the aggravation of Fiacco's physical injuries as a result of the negligent failure to provide her with medical attention was relatively small. Given this possibility, we conclude that the jury's verdicts as to damages were not inconsistent.

V. THE CROSS-APPEAL AS TO THE REMITTITUR

[10] Fiacco's cross-appeal challenging the order of the district court setting aside the verdict of damages as excessive and directing a new trial unless she agreed to a remittitur of $50,000 need not detain us long. A line of decisions stretching back into the past century has established that when a plaintiff has agreed to a remittitur order, he cannot challenge it either on an appeal, *Donovan, v. Penn Shipping Co.*, 429 U.S. 648, 649, 97 S.Ct. 835, 836 51 L.Ed.2d 112 (1977)(per curiam); *Kennon v. Gilmer*, 131 U.S. 22, 29-30 , 9 S.Ct. 696, 698-98, 33 L.Ed. 110 (1889), or on a cross appeal, *see e.g., Woodworth v. Chesborough*, 244 U.S. 79, 82, 37 S.Ct. 583, 584, 61 L.Ed. 1005 (1917); *Koenigsberger v. Richmond Silver Mining Co.*, 158 U.S. 41, 52, 15 S.Ct. 751, 756, 39 L.Ed. 889 (1895); *see also* 6A *Moore's Federal Practice par.* 59,-08[7], at 59-206 (2d ed. 1984 ("IF the defendant appeals, plaintiff may not seek to restore the remitted amount by cross-appeal, or as an appellee argue for restoration of the original verdict...") While an exception to this rule may be made where the appellate court has vacated the

judgment, *see Akermanis v. Sea-Land Service, Inc.*, 688 F.2d 898, 903-04 (2d Cir. 1982), *cert. denied,* 461 U.S. 927, 103 S.Ct. 2087, 77 L.Ed 2d 298 (1983), no such exception is applicable here. Having accepted the remittituur order and thereby consented to the reduced verdict, Fiacco is prohibited from challenging the remittitur order. The cross appeal is, accordingly, dismissed.

CONCLUSION

The judgment of the district court awarding Fiacco $25,000 against all defendants on her section 1983 claim is in all respects affirmed.

The following is taken from United States Supreme Court, *Monell v. New York City Dept. of Social Services,* 436 U. S. 690 1977.

Before BRENNAN, STEWART, WHITE, MARSHALL BLACKMUN and POWELL.

Petitioner, female employees of the Department of Social Services and the Board of Education of the City of New York brought this class action against the department and its commissioner, Board and its Chancellor, and the city of New York and its Mayor under 42 U.S.C. section 1983, which provides that every "person" who, under color of any statute, ordinance, regulation, custom, or usage of any State subjects, or "causes to be subjected," any person to the deprivation of any federally protected rights, privileges, or immunities shall be civilly liable to the injured party. In each case, the individual defendants were sued solely in their official capacities. The gravamen of the complaint was that the Board and the Department had as a matter of official policy compelled pregnant employees to take unpaid leaves of absence before such leaves were required for medical reasons. The District Court found that petitioners' constitutional rights had been violated, but held tdhat

petitioners' claims for injunctive relief were mooted by a supervening change in the official maternity leave policy. That court further held that Monroe v. Pape, 365 U. S. 167, barred recovery of backpay from the Department, the Board, and the City. In addition, to avoid circumvention of the immunity conferred by Monroe, the District Court held that natural persons sued in their official capacities as officers of a local government also enjoy the immunity conferred on local governments by that decision. The Court of Appeals affirmed on a similar theory. Held:

1. In *Monroe v. Pape*, supra, after examining the legislative history of the Civil Rights Act of 1871, now codified as 42 U.S.C. section 1983, and particularly the rejection of the so-called Sherman amendment, the Court held that Congress in 1871 doubted its constitutional authority to impose civil liability on municipalities and therefore could not have intended to include municipal bodies within the class of "persons" subject to the act. Re-examination of this legislative history compels the conclusion that Congress in 1871 would not have thought section 1983 constitutionally infirm if it applied to local governments. In addition, that history confirms that local governments were intended to be included among the "persons" to which section 1983 applies. Accordingly, *Monroe v. Pape* is overruled insofar as it holds that local governments are wholly immune from suit under section 1983. Pp.664-689

2. Local governing bodies (and local officials sued in their official capacities) can, therefore, be sued directly under section 1983 for monetary, declaratory, and injunctive relief in those situations where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by those whose edicts or acts may fairly be said to represent official policy. In addition, local governments, like every other section 1983 "person," may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such custom has not received formal approval through the government's official decision making channels. Pp. 690-691.

3. On the other hand, the language and legislative history of section 1983 compel the conclusion that Congress did not intend a local government to be held liable solely because it employs a tortfeasor-in other words, a local government cannot be held liable under section 1983 on a respondeat superior theory. Pp.691-695

4. Considerations of *stare decisis* do not counsel against overruling *Monro v. Pape* insofar as it is inconsistent with this opinion. Pp.695-701.

(a) *Monroe v. Pape* departed from prior practice insofar it completely immunized municipalities from suit under section 1983. Moreover, since the reasoning of *Monroe* does not allow a distinction to be drawn between municipalities and school board, this Court's many cases holding school board liable in section 1983 actions are inconsistent with *Monroe,* especially as the principle of that case was extended to suits for injunctive relief in *City of Kenosha v. Bruno, 412 U.S. 507. Pp. 695-696*

(b) Similarly, extending absolute immunity to school boards would be inconsistent with several instances in which Congress has refused to immunize school boards from federal jurisdiction under section 1983. Pp.696-699

(c) In addition, municipalities cannot have arranged their affairs on an assumption that they can violate constitutional rights for an indefinite period; accordingly, municipalities have no reliance interest that would support an absolute immunity. Pp.699-700

(d) Finally, it appears beyond doubt from the legislative history of the Civil Rights Act of 1871 that *Monroe* misapprehended the meaning of the Act. Were section 1983 unconstitutional as to local governments, it would have been equally unconstitutional as to state or local officers, yet the 1871 Congress clearly intended section 1983 to apply to such officers and all agreed that such officers could constitutionally be subjected to liability under section 1983. The Act also unquestionably was intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights. Therefore, without a clear statement in the legislative history, which is not present, there is no justification for excluding municipalities from the "persons" covered by section

1983. Pp.700-701.

5. Local governments sued under section 1983 cannot be entitled to an absolute immunity, lest today's decision "be drained of meaning," *Scheue v. Rhodes,* 416 U.S. 232, 248 P. 701
532 F.2d 259, reversed.

BRENNAN, J., delivered the opinion of the Court, in which STEWART, WHITE, MARSHALL, BLACKMUN, and POWELL, J., Joined and in Parts I, III, and V of which STEVENS, J., Joined. POWELL, J., filed a concurring opinion, post, p. 704 STEVENS, J., filed a statement concurring in part, post, p.714. REHNQUIST, J., filed a dissenting opinion , in which BURGER, C.J., joined, post, p.714.

OSCAR CHASE argued the cause for respondents. With him on the brief was W. Bernard Richland.*

L. KEVIN SHERIDAN argued the cause for respondents. With him on the brief was W. Bernard Richland.*

**Michael H. Gottesman, Robert M.Weinberg, David Rubin, Albert E. Jenner, Jr., Robert A. Murphy,* and *William E. Caldwell* filed a brief for the National Education Assn. Et al. as *amici curiae* urging reversal.

Mr. JUSTICE BRENNAN DELIVERED THE OPINION OF THE Court.

Petitioners, a class of female employees of the Department of Social Services and the Board of Education of the city of New York, commenced this action under 42 U.S.C. section 1983 in July 1971.[1]

The gravamen of the complaint was that the Board and the Department had as a matter of official policy compelled pregnant employees to take unpaid leave of absence before such leaves were required for medical reasons.[2] Cf. *Cleveland Board of Education v. LaFleur,* 414 U.S. 632 (1974). The suit sought injunctive relief and back pay for periods of unlawful forced leave. Named as defendants in the action were the Department and its Commissioner, the Board and its Chancellor, and the city of New York and its Mayor. In each case, the individual defendants were sued solely in their official capacities.[3]

1 The complaint was amended on September 14, 1972, to allege a claim under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. Section 2000e et seq. (1970 ed. And Supp. V). The District Court held that The 1972 Amendments to Title VII did not apply retroactively to Discrimination suffered prior to those amendments even when an action Challenging such prior discrimination was pending on the date of the Amendments. 394 F. Supp. 853, 856 (SDNY 1975). This holding was Affirmed on appeal. 532 F. 2d 259, 261-262 (CA2- 1976). Although Petitioners sought certiorari on the Title VII issue as well as the section 1983, we restricted our grant of certiorari to the latter issue. 429 U.S. 1071.

2 The plaintiffs alleged that New York had a city wide policy of forcing women to take maternity leave after the fifth month of pregnancy unless a city physician and the head of an employee's agency allowed up to an additional two months of work. Amended Complaint paragraph 28, App13-14 The defendants did not deny this, but stated that this policy had been Changed after suit was instituted. Answer par. 13, App, 32-33. The plain-Tiff further alleged that the Board had a policy of requiring women to Take maternity leave after the seventh month of pregnancy unless that Month fell in the last month of the school year, in which case the teacher Could remain through the end of the school term. Amended Complaint Paragraphs 39,42, 45, App. 18-19, 21. This allegation was denied. Answer Paragraphs 18, 22, App. 35,37

3 Amended complaint par 24, App. 11-12.

On cross-motions for summary judgment, the District Court For Southern District of New York held moot petitioners' claims for injunctive and declaratory relief since the city of New York and Board, after the filing of the complaint, had changed their policies relating to maternity leaves to that no pregnant employee would have to take leave unless she was medically unable to continue to perform her job. 394 F. Supp. 853, 855 (1975). No one now challenges this conclusion. The court did conclude, however, that the acts complained of were unconstitutional under *LaFleur, Supra.* 394 F. Supp., at 855. Nonetheless plaintiffs' prayers for backpay were denied because any such damages would come ultimately from the City of New York and, therefore, to hold otherwise would be to "circumven[t]" the immunity conferred on municipalities by *Monroe v. Pape,* 365 U.S. 167 (1961). See F. Supp., at 855.

On appeal, petitioners renewed their arguments that the Board of Education [4] was not a municipality: within the meaning of *Monroe v. Pape, supra,* and that, in any event, the District Court had erred in barring a damages award against the individual defendants. The Court of Appeals for the Second Circuit rejected both contentions. The court first held that the Board of Education was not a "person" Under section 1983 because "it performs a vital governmental function . . , and, significantly, while it has the right to determine how the funds appropriated to it shall be spent . . . , it has no final say in deciding what its appropriations shall be." 532 F.2d 259, 263 (1976). The individual defendants, however, were "persons" under section 1983, even when sued solely in their official capacities. 532 F. 2d, at 264. Yet, because a damages award would "have to be paid by a city that was held not to be amenable to such an action in *Monroe v. Pape,"* a damages action against officials sued in their official capacities could not proceed. *Id.,* at 265.

We granted certiorari in this case, 429 U.S. 1071, to consider

"Whether local governmental officials and/or local independent

4. Petitioners conceded that the Department of Social Services enjoys the Same status as New York City for *Monroe* purposes. See 532 F.2d, at 263.

School boards are 'persons' within the meaning of 42 U.S.C. Section 1983 when equitable relief in the nature of back pay is Sought against them in their official capacities?" Pet.ForCert.8

Although, after plenary consideration, we have decided the merits of over a score of cases brought under section 1983 in which the principal defendant was a school board [5] __and, indeed, in some of which section 1983 and its jurisdictional counterpart, 28 U.S.C. Section 1343, provided the only basis for jurisdiction [6] __we indicated in *Mt. Healthy City Board of Education v. Doyle,* 429 U.S. 274, 279 (1977), last Term that the question presented here was open and would be decided "another day." That other day has come and we now overrule *Monroe v. Pape, supra,* insofar as it holds that local

5 *Mililken v. Bradley,* 433 U.S. 267 (1977); *Dayton Board of Education v. Brinkman,* 433 U.S. 405 (1977); *Vorchheimer v. School District of Philadelphia* 430 U. S. 703 (1977); *East Carroll Parish School Board v. Marshall,* 424 U. S. 636 (1976); *Milliken v. Bradley,* 418 U.S. 717 (1974); *Bradley v. Richmond School Board,* 416 U.S. 696 (1974); *Cleveland Board Education* v. LaFleue, 414 U.S. 632 (1974), 414 U.S. 632, *Keyes v. School District No. 1, Denver Colo.,* 413 U.S. 189 (1973); *San Antonio School District v. Rodriguez,* 411 U. S. 1 (1973); *Swann v. Charlotate-Mecklenburg Board of Education,* 402 U.S. 1 (1971); *Northcross v. Memphis Board of Education,* 397 U.S. 232 (1970) *Carter v. West Feliciana Paris School Board,* 396 U.S. 226 (1969); *Alexander v. Holmesw County Board of Education,* 396 U.S. 19 (1969); *Kramer v. Union Free School District,* 395 U. S. 621 (1969); *Tinker v. Des Moines Independent School District,* 393 U.S. 503 (1969); *Monroe v. Board of Comm'rs,* 391 U. S. 450 (1968) *Rainey v. Board of Education,* 391 U. S. 443 (1968); *Green v. New York Kent County School Board, 391 U. S. 430 (1968); Abington School District v. Schempp,* 374 U.S. 203 (1963); *Goss v. Board of Education,* 373 U.S. 683 (1963); *McNeese v. Board of Education,* 373 U.S. 668 (1963); *Orleans Parish School Board v. Bush,* 365 U. S. 569 (1961); *Brown v. Board ofEducation,* 347 U.S. 483 (1984).

6 *Cleveland Board of Education v. LaFleur, supra,* at 636; App. In *Keyes v. School District NO. 1, Denver, Colo.,* O.T. 1972, No. 71-507 p.4a; App. In *Swann v. Charlotte-Mecklenburg Board of Education,* O.T. 1970, No 281, p. 465; Pet. For Cert. in *Northcross v. Memphis Board of Education,* O.T. 1969, No. 1136, p.3; *Tinker v. Des Moines Independent School Dist, supra,* at 504; *McNeese v. Board of Education; supra,* at 671

Governments are wholly immune from suit under section 1983.[7]

In *Monroe v. Pape,* we held that "Congress did not undertake to bring municipal corporations within the ambit of {1983]." 365 U.S. At 187. The sole basis for this conclusion was an inference drawn from Congress' rejection of the "Sherman amendment: to the bill which became the Civil Rights act of 1871, 17 Stat. 13, the precursor of section 1983. The amendment would have held a municipal corporation liable for damage done to the person or property of its inhabitants by *private* persons "riotously and tumultuously assembled."[8] Cong. Globe, 42d Cong., 1st Sess., 749 (1871) (hereinafter Globe). Although the Sherman amendment did not seek to amend section 1 of the Act, which is now section 1983, and although the nature of the obligation created by that amendment was vastly different from that created by section 1, the Court nonetheless concluded in *Monroe* that Congress must have meant to exclude municipal corporations from the coverage of section 1 because "the House [in voting against the Sherman amendment] had solemnly decided that in their judgment Congress had no constitutional power to impose any *obligation* upon county and town organizations, the mere instrumentality for the administration of state law.'" 365 U.S., at 190 (emphasis added), quoting Globe 804 (Rep. Poland). This statement, we thought, showed that Congress doubted its "constitutional power . . . to impose civil liability on municipalities, " 365 U.S., at 190 (emphasis added), [9]

7 However, we do uphold *Monroe v. Pape* insofar as it holds that the doctrine of *respondeat superior* is not a basis for rendering municipalities liable under section 1983 for the constitutional torts of their employees. See part II, infra.

8 We expressly declined to consider "policy considerations" for or against municipal liability. See 365 U.S., at 191.

9 Mr. Justice Douglas, the author of *Monroe*, has suggested that the municipal exclusion might more properly rest on a theory that Congress sought to prevent the financial ruin that civil rights liability might impose on municipalities. See *City of Kenosha v.Bruno,* 412 U.S. 507; 517-520 (1973). However, this view has never been shared by the Court, see *Monroe v. Pape* 365 U.S., at 190; *Moor v. County of Alameda,* 411 U.S. 693, 708 (1973), and the debates do not support Position.

A fresh analysis of the debate on the Civil Rights Act of 1871, and particularly of the case law which each side mustered in its support, shows, however, that *Monroe incorrectly equated the "obligation"* of which Representative Poland spoke with "civil liability"

A. An Overview

There are three distinct stages in the legislative consideration of the bill which became the Civil Rights Act of 1871. On March 28, 1871, Representative Shellabarger, acting for a House select committee, reported H.R. 320, a bill "to enforce the provisions of the fourteenth amendment to the Constitution of the United States, and for other purposes." H.R. 320 contained four sections. Section 1, now codified as 42 U.S.C. section 1983, was the subject of only limited debate and was passed without amendment [10] Sections 2 through 4 dealt primarily with the "other purpose" of surpessing Ku Klux Klan violence in the Southern States.[11] The wisdom and constitutionality of these sections-not section 1, now section 1983- were the subject of almost all congressional debate and each of these sections was amended. The House finished its initial debates on H.R. 320 on April 7, 1871, and one week later the Senate also voted out a bill [12] Again, debate on section 1 of the bill was limited and that section was passed as introduced.

10 Globe 522.

11 Briefly, section 2 created certain federal crimes in addition to those defined in section 2 of the 1866 Civil Rights Act, 14 Stat. 27, each aimed primarily at the Ku Klux Klan. Section 3 provided that the President could send the militia into any State wracked with Klan violence. Finally, section 4 suspension of the writ of habeas corpus in enumerated circumstances, again primarily those thought to obtain where Klan violence was rampant. See Cong. Globe, 42d Cong., 1st Sess., App. 335-336 (1871) (hereinafter Globe App.).

12 Globe 709.

Immediately prior to the vote on H. R. 320 in the Senate, Senator Sherman introduced his amendment. [13] This was not an amendment to section 1 of the bill, but was to be added as section 7 at the end of the bill. Under the Senate rules, no discussion of the amendment was allowed and, although attempts were made to amend the amendment, it was passed as introduced. In this form, the amendment did not place liability on municipal corporations, but made any inhabitants of a municipality liable for damage inflicted by persons "riotously and tumultuously assembled." [14]

The House refused to acquiesce in a number of amendments made by the Senate, including the Sherman amendment, and the respective versions of H.R. 320 were therefore sent to a conference committee. Section 1 of the bill, however, was not a subject of this conference since as noted, it was passed verbatim as introduced in both Houses of Congress.

On April 18, 1871, the first conference committee completed its work on H.R. 320. The main features of the conference committee draft of the Sherman amendment were these.[15] First, a cause of action was given to persons injured by

> "any persons riotously and tumultuously assembled together . . . with intent to deprive any person of any right conferred upon him by the Constitution and laws of the United States, or to deter him or punish him for exercising such right, or by reason of his race, color, or previous condition of servitude . . . ."

13 See *id.*, at 663, quoted in Appendix to this opinion, *infra*, at 702-703.

14 *Ibid.* An action for recovery of damages was to be in the federal courts and denominated as a suit against the county, city; or parish in which the damage had occurred. *Ibid.* Execution of the judgment was not to run against the property of the government unit, however, but against the private property of the government unit, however, but against the private property of the inhabitants.

15 See Globe 749 and 755, quoted in Appendix to this opinion, *infra*, 703-704.

Second, the bill provided that the action would be against the county, city, or parish in which the riot had occurred and that it could be maintained by either the person injured or his legal representative. Third, unlike the amendment as proposed, the conference substitute made the government defendant liable on the judgment if it was not satisfied against individual defendants who had committed the violence. If a municipality were liable, the judgment against it could be collected

> "by execution, attachment, mandamus, garnishment, or any other proceeding in aid of execution or applicable to the enforcement of judgments against municipal corporations; and such judgment [would become] a lien as well upon all moneys in the treasury of such county, city, or parish, as upon the other property thereof."

In the ensuing debate on the first conference report, which was the first debate of any kind on the Sherman amendment, Senator Sherman explained that the purpose of his amendment was to enlist the aid of persons of property in the enforcement of the Civil rights laws by making their property "responsible" for Ku Klux Klan damage. [16] Statutes drafted on a similar theory, he stated, had long been in force in England and were in force in 1871 In England and were in force in 1871 in a number of States[17]

16 " Let the people of property in the southern States understand that if they will not make the hue and cry and take the necessary steps to put lawless violence in those States their property will be holden responsible, and the effect will be most wholesome." Globe 761.

Senator Sherman was apparently unconcerned that the conference Committee substitute, unlike the original amendment, did not place liability for riot damage directly on the property of the well-to-do, but instead placed it on the local government. Presumably he assumed that taxes would be levied against the property to the inhabitants to make the locality Whole.

17 According to Senator Sherman, the law had originally been adopted in England immediately after the Norman Conquest and had most recently Been promulgated as the law of 7 & * Geo. 4, ch. 31 (1827). See Globe

Nonetheless there were critical differences between the conference substitute and extant state and English statutes: The conference substitute, unlike most state riot statutes, lacked a short statute of limitations and imposed liability on the government defendant whether or not it had notice of the impending riot, whether or not the municipality was authorized to exercise a police power, whether or not it exerted all reasonable effort to stop the riot, and whether or not the rioters were caught and punished. [18]

The first conference substitute passed the Senate but was rejected by the House. House opponents, within whose ranks were some who had supported section 1, thought the Federal Government could not, consistent with the Constitution, obligate municipal corporations to keep the peace if those corporations were neither so obligate nor so authorized by their state charters. And, because of this constitutional objection, opponents of the Sherman amendment were unwilling to impose damages liability for nonperformance of a duty which Congress could not require municipalities to perform. This position is reflected in Representative Poland's statement that is quoted in *Monroe.* [19]

Because the House rejected the first conference report a second conference was called and it duly issued its report. The second conference substitute for the Sherman amendment abandoned municipal liability and, instead, made "any person or persons having

760. During the course of the debates, it appeared that Kentucky, Maryland, Massachusetts, and New York had similar laws. See *id,* at 751 (Rep. Shellabarger); *id.* at 762 (Sen. Stevenson) ; *id., at 771 (*Sen Thurman); *Id.,* at 792 (Reo. Butler). Such a municipal liability was apparently common throughout New England. See *id.,* at 761 (Sen. Sherman).

18 In the Senate, opponents, including a number of Senators who had Voted for section 1 of the bill, criticized the Sherman amendment as an imperfect and impolitic rendering of the state statutes. Moreover, as drafted, the conference substitute could be construed to protect rights that were not protected by the Constitution. A complete critique was given by Senator Thurman. See Globe 770-772.

19 See 365 U.S., at 190, quoted *supra,* at 664.

knowledge [that a conspiracy to violate civil rights was afoot], and having power to prevent or aid in preventing the same," who did not attempt to stop the same, liable to any person injured by the conspiracy[20] The amendment in this form was adopted by both Houses of Congress and is now codified as 42 U.S.C. section 1986.

The meaning of the legislative history sketched above can most readily be developed by first considering the debate on the report of the first conference committee. This debate shows conclusively that the constitutional objections raised against the Sherman amendment- on which our holding in *Monroe* was based, see *supra*, 664- would not have prohibited congressional creation of a civil remedy against state municipal corporations that infringed federal rights. Because section 1 of the Civil Rights Act does not state expressly that municipal corporations come within its ambit, it is finally necessary to interpret section 1 to confirm that such corporations were indeed intended to be included within the "persons" to whom that section applies.

B. Debate on the First Conference Report

The style of argument adopted by both proponents and opponents of the Sherman amendment in both Houses of Congress was largely legal, with frequent references to cases decided by this Court and the Supreme Courts of the several States. Proponents of the Sherman amendment did not, however, discuss in detail the argument in favor of its constitutionality. Nonetheless, it is possible to piece together such an argument from the debates on the first conference report and those on section 2 of the civil rights bill, which, because it allowed the Federal Government to prosecute crimes "in the States, " had also raised questions of federal power. The account of Representative Shellabarger, the House sponsor H.R. 320, is the most complete

20 See Globe 804 quoted in Appendix to this opinion, *infra,* at 704.

Shellabarger began his discussion of H. R. 820 by stating that "there is a domain of constitutional law involved in the right consideration of this measure which is wholly unexplored." Globe App. 67 There were analogies, however. With respect to the meaning of section 1 of the Fourteenth Amendment, and particularly its Privileges or Immunities Clause, Shellabarger relied on the statement of Mr. Justice Washington In *Corfield v. Coryell,* 4 Wash. C.C. 371 (CC ED Pa. 1825), which defined the privileges protected by Art. IV:

> "What these fundamental privileges are[,] it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: protection by the Government;'-
>
> "*Mark that—*
>
> "'*protection by the Government;* the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety . . . . ' "Globe App. 69 (emphasis added) quoting Wash. C./C., at 380-381.

Building on his conclusion that citizens were owed protection-a conclusion not disputed by opponents of the Sherman amendment [21] -Shellabarger then considered Congress' role in providing that protection. Here again there were precedents:

> "[Congress has always] assumed to enforce, as against

21 See Globe 758 (Sen Trumbull); *id.,* at 772 (Sen. Thurman); *id.,* at 791 (Rep. Willard). The Supreme Court of Indiana had so held in giving effect to the Civil Rights Act of 1866. See *Smith v. Moody,* 26 Ind. 299 (1866) (following *Coryell),* one of three State Supreme Court cases referred to in Globe App. 68 (Rep. Shellabarger) Moreover, section 2 of the 1871 Act as passed, unlike section 1, prosecuted persons who violated federal rights whether or not that violation was under color of official authority, apparently on the theory that Ku Klux Klan violence was infringing the right of protection defined by *Coryell.* Nonetheless, opponents argued that municipalities were not generally charged by the States with keeping the peace and hence did not have police forces, so that the duty to afford

> The States, and also persons, every one of the provisions Of the Constitution. Most of the provisions of the Con-Situation which restrain and directly relate to the States Such as those in {Art. I, sec. 10,] relate to the divisions of The political powers of the State and General Governments. . . . These prohibitions upon political powers of the States are all of such nature that they can be, and even have been, . . . enforced by the courts of the United States declaring void all State acts of encroachment on Federal Powers. Thus, and thus sufficiently, has the United States 'enforced' these provisions of the Constitution. But there are some that are not of this class. These are where the court secures the rights or the liabilities of persons within the States , as between such persons and the States.
>
> "These three are: first, that as to fugitives from justice; [22] second, that as to fugitives from service, (or slaves;)[23] third, that declaring that the 'citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.' [24]

The peace and hence did not have police forces, so that the duty to afford protection ought not devolve on the municipality, but on whatever agency Of state government was charged by the State with keeping the peace. See *infra*, at 673, and n. 30. In addition, they argued that Congress could Not constitutionally add to the duties of municipalities See *infra*, 673-678

22 U. S. Const., Art.IV section 2, cl.2:

"A person charged in any State with Treason, Felony, or Crime, who shall fled from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

23 *I.d.* ., cl.3:

'No person held to Service or Labour in one state, under the laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."

24 *Id., cl. 1.*

> "And sir, every one of these- the only provisions where it was deemed that legislation was required to enforce the constitutional provisions-the only three where the rights or liabilities of persons in the States, as between these persons and the States, are directly provided for, Congress has by legislation affirmatively interfered to protect . . . such persons." Globe App. 69-70.

Of legislation mentioned by Shellabarger, the closest analog of the Sherman amendment, ironically, was the statute implementing the fugitives from justice and fugitive slave provisions Of Art. IV-the Act of Feb. 12, 1793, I Stat. 302-the constitutionality of which had been sustained in 1842, *Prigg v. Pennsylvania,* 16 Pet. 539. There, Mr. Justice Story, writing for the Court, held that Art. IV gave slaveowners a federal right to the unhindered possession of their slaves in whatever State such slaves might be found. 16 Pet., at 612. because state process for recovering runaway slaves might be inadequate or even hostile to the rights of the slaveowner, the right intended to be conferred could be negated if left to state implementation. *Id.,* at 614. Thus since the constitution guaranteed the right and this in turn required a remedy, Story it to be a "natural inference" that Congress had the power itself to insure an appropriate (in the Necessary and Proper Clause sense) remedy for the right. Id., at 615.

Building on *Prigg, Shellabarger* argued that a remedy against municipalities and counties was an appropriate3-and hence constitutional-method for ensuring the protection which the Fourteenth Amendment made every citizen's federal right. [25] This much was clear from the adoption of such statutes by the several States as devices for suppressing riot. [26] thus, said Sheliabarger,) the only serious question remaining.

25 See Glove 751 See also id., at 700 (Sen.Sherman) ("if a State May... pass a law making a county . . . responsible for a riot in order to deter such crime, then we may pass the same remedies . . . l").

26 *Id.,* at 751; see n. 17, supra.

was "whether, since a county is an integer of part of a State, the United States can impose upon it as such, *any obligations to keep the peace* in obedience to United States laws." [27] This is answered affirmatively, citing *Board of Comm'rs v. Aspinwall,* 24 How. 376 (1861), the first of many cases [28] upholding power of federal courts to enforce the Contract Clause against municipalities. [29]

House opponents of the Sherman amendment-whose views are particularly important since only the House voted down the amendment-did not dispute Shellabarger's claim that the Fourteenth Amendment created a federal right to protection, seen. 21, *supra*, but they argued that the local units of government upon which the amendment fastened liability were not obligated to keep the peace at state law and further that the Federal Government could not constitutionally require local governments to create police forces, whether this requirement was levied directly, or indirectly by imposing damages for breach of the peace on municipalities. The most complete statement of this position is that of Representative Blair [30]

"the proposition known as the Sherman Amend-

27 Globe 751 (emphasis added) Compare this statemet with Representative Poland's remark upon which our holding in *Monroe* was based. See Supra, at 684.

28 See, e.g., *Gelpecks v. Dubuque,* 1 Wall 175 (1864); *Van Hoffman v. City of Quincy,* 4 Wall, 535 (1867); *Riggs v. Johnson County,* 6 Wall. 166 (1868); *Weber v. Lee County,* 6 Wall. 210 (1868); *Supervisors v. Rogers,* 7 Wall. 175 (1869); *Benbow v. Iowa City,* 7 Wall. 313 (1869); *Supervisors v. Durant,* 9 Wall. 415 (1870), See generally 6 C. Fairman, History of the Supreme Court of the United States: Reconstruction and Reunion, 1864-1888, OHS. 17-18 (1971).

29 See Glove 751-752.

30 Others taking a view similar to Representative Blair's included: Representative Willar, see *id.*, 795; Representative Farnsworth, See *id.* at 799. Representative Willard also took a somewhat different Position; He thought that the Constitution would not allow the Federal

> Ment . . . is entirely new. It is altogether without a Precedent in this country . . . . That amendment claims the Power in the General Government to go into the States of this Union and lay such obligations as it may Please upon the municipalities, which are the creations Of the States alone. . . .
>
> " . . . [H] ere is a proposed, not to carry into effect an obligation which rests upon the municipality, but to

Government to dictate the manner in which a State fulfilled its obligation Of protection. That is he thought it a matter of state discretion whether It delegated the peacekeeping power to a municipal or county corporation, To a sheriff, et. He did not doubt, however, that the Federal Government could impose on the *States* the obligation imposed by the Sherman amendment, and presumably he would have enforced the amendment against a municipal corporation to which the peacekeeping obligation had been delegated. See *id.*, at 791.

Opponents of the Sherman amendment in the Senate agreed with Blair That Congress had no power to pass the Sherman Amendment because it Fell outside limits on national power implicit in the federal structure of the Constitution and recognized in e. g., *Collector v. Day,* 11 Wall. 113 (1871). However, the Senate opponents focused not on the amendment's attempt to obligate municipalities to keep the peace, but on the lien created by the amendment, which ran against all money and property of a defendant municipality, including property held for public purposes, such jails or courthouses. Opponents argued that such a lien once entered would have the effect of making it impossible for the municipality to function, since no one would trade with it. See *e.g.,* Globe 762 (Sen. Stevenson); *id.,* at 763 (Sen. Casserly). Moreover, everyone knew that sound policy prevented execution against public property since this, too, was needed it local government was to survive. See *e.g. ibid.* See also *Meriwether v. Garrett,* 102 U.S. 472, 501, 513 (1880) (recognizing principle that public Property of a municipality was not subject to execution); 2 J. Dillon, The Law of Municipal Corporations sections 445-446 (1873 ed.) (same)

Although the arguments of the Senate opponents appear to be a correct analysis of then-controlling constitutional and common –law principles, their argument are not relevant to an analysis of the constitutionality of section 1 of the Civil Rights Act since judgment under that section, as in any civil suit in the federal courts in 1871, would have been enforced pursuant to *state* laws under the process Acts of 1792 and 1828. See Actg of May 8, 1792, ch.36, 1 Stat. 275; Act of May 19, 1828, 4 Stat. 278.

create the obligation, and that is the provision. I am unable to assent to. The parallel of the hundred does not in the least meet the case. The power that laid the obligation upon the hundred first put the duty upon the hundred that it should perform in that regard, and failing to meet the obligation which had been laid upon it, it was very proper that it should suffer damage for its neglect . ..

" . . . [T] here are certain rights and duties that belong to the States, . . . there are certain powers that inhere in the State governments. They create these municipalities, they say what their powers shall be and what their obligations shall be. If the Government of the United States can step in and add to those obligations, may it not utterly destroy the municipality? If it can say that it shall be liable for damages occurring from a riot, . . . where [will] its power . . . stop and what obligation s . . . might [it] not lay upon a municipality . . . .

"Now, only the other day, the Supreme Court . . . decided [in Collector v. Day, 11 Wall, 113 (1871) that there is no power in the Government of the United States, under its authority to tax, to tax the salary of a State officer. Why? Simply because the power to tax involves the power to destroy, and it was not the intent to give the Government of the United States power to destroy the government of the States in any respect. It was held also in the case of *Prigg vs. Pennsylvania* [16 Pet. 539 [1842]) that it is not within the power of the Congress of the United States to lay duties upon a State officer; that we cannot command a State officer to do any duty whatever, such; and I ask . . . the difference between that and commanding a municipality, which is equally the creature of the State, to perform a duty." Globe 795.

Any attempt to impute a unitary constructional theory to opponents of the Sherman amendment is, of course, fraught

with difficulties, not the least of which is that most Members of Congress did not speak to the issue of the constitutionality of the amendment. Nonetheless, two considerations lead us to conclude that opponents of the Sherman amendment found it unconstitutional substantially because of the reason stated by Representative Blair; First, Blair's analysis is precisely that of Poland, whose views were quoted as authoritative in *Monroe,* see *supra,* at 664, and that analysis was shared in large part by all House opponents who addressed the constitutionality of the Sherman amendment[31] Second, Blair's exegesis of the reigning constitutional theory of his day, as we shall explain, was clearly supported by precedent-albeit precedent that has not survived, See *Ex parte Virginia,* 100 U.S. 339, 347-348 (1880); *Graves v. New York ex rel. O'Keefe,* 306 U.S. 466, 486 (1939)-and no other constitutional formula was advanced by participants in the House debates.

Collector v. Day, cited by Blair, was the clearest and, at the time of the debates, the most recent pronouncement of a Doctrine of coordinate sovereignty that, as Blair stated, placed limits on even the enumerated powers of the National Government in favor of protecting state prerogatives. There, the Court held that the United States could not tax the income of day, a Massachusetts state judge, because the independence of the states within their legitimate spheres would be imperiled if the instrumentalities through which States executed their powers were "subject to the control of another and distinct government." 11 Was., at 127. Although the Court in *Day* apparently rested this holding in part on the proposition that the taxing "power acknowledges no limits but the will of the legislative body imposing the tzx," *id.,* at 125-126; cf. *McCullock v. Maryland,* 4 Wheat, 316, (1819), the Court had in other cases limited other national powers in order to avoid interference with the States[32]

31 See.30, *supra.*

32 In addition to the cases discussed in the text, see Lane County v. Ore-

In *Prigg v. Pennsylvania,* for example, Mr. Justice Story, in addition to confirming a broad national power to legislate under the Fugitive Slave Clause, se *supra,* at 672, held that Congress could not "insist that states ... provide means to carry into effect the duties of the national government." 16 At Pet., at 615-616.[33] And Mr. Justice McLean agreed that, "[a]s a general principle," it was true "that Congress nod no power to impose duties on state officer, as provided in the [Act of Feb. 12, 1793]." Nonethless, he wondered whether Congress might not impose "positive" duties on state officers where a clause of the Constitution, like the Fugitive Slave Clause, seemed to require affirmative government assistance other than restraint of government, to secure federal rights. See *id.,* at 664-665.

Had Mr. Justice McLean been correct in his suggestion that, where the Constitution envisioned affirmative government assistance, the States or their officer or instrumentalities could be required to provide it, there would have been little doubt that Congress could have insisted that municipalities afford by "positive" action the protection [34] owed individuals under Section 1 of the Fourteenth Amendment whether or not municipalities were obligated by state law to keep the peace. However, any such argument, largely foreclosed by *Prigg,* was made

Gon, 7 Wall. 71,72,81 (1989), in which the Court held that the federal Legal Tender Acts should not be consgtrued to require the States to accept Taxes tendered in United States notes since this might interfere with a legitimate state activity.

33 Mr. Chief Justice Taney agreed:
"The state oficers mentioned in the law [of 1793] are not bound to execute the duties imposed upon them by Congress, unless they chose to do so, or are required to do so by a law of the state; and the state legislature has the power, if it thinks proper, to prohibit them. The act of 1793, therefore, must depend altogether for its execution upon the officers of the United States named in it.," 16 Pet., at 630 (concurring in part).

34 See *supra* at 670, and n.21.

impossible by the Court's holding in *Kentucky v. Dennison,* 24 How. 66 (1861). There, the Court was asked to require Dennison, the Governor of Ohio, the hand over Lago, a fugitive from justice wanted in Kentucky, as required by section 1 of the Act of Feb 12, 1793[35] which implemented Art. IV, section 2 cl. 2, of the Constitution. Mr.Chief Justice Taney, writing for a unanimous Court, refused to enforce that section of the Act.

> "[W]e think it clear, that the Federal Government, under the Constitution, has no power to impose on a State officer as such, any duty whatever, and compel him to perform it; for if it possessed this power, it might overload officer with duties which would fill up all his time and disable him from performing his obligations to the State, and might impose on him duties of a character incompatible with the rank and dignity to which he was elevate by the State." 24 How., at 107-108.

The rational of *Dennison*-that the Nation could not impose duties on state officer since that might impede States in their legitimate activities-is obviously identical to that which animated the decision in *Collector v. Day. See supra,* at 676. And, as Blair indicated, municipalities as instrumentalities through which States executed their policies could be equally disabled from carrying out state policies if they were also obligated to carry out federally imposed duties. Although no one cited *Dennison* by name, the principle for which it

35 "*Be it enacted*. . That whenever the executive authority of any state in the Union . . . shall demand any person as a fugitive from justice and shall moreover produce the copy of an indictment found. . . charging the person so demanded, with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the state . . . from whence the person so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured . . . . and to cause the fugitive to be delivered to such agent [of the demanding State] when he shall appear . . . ." I Stat. 302.

stands was well known to Member of Congress, [36] many of whom discussed *Day* [37] as well as a series of State Supreme Court cases [38] in the mid-1860's which had invalidated a federal tax on the process of state court on the ground that the tax threatened the independence of a vital state function. [39] Thus, there was ample support for Blair's view that the Sherman Amendment, by putting municipalities to the Hobson" choice of keeping the peace or paying civil damages, attempted to impose obligations on municipalities by indirection that could not be imposed directly, thereby threatening to "destroy the government of the States." Globe 795.

If municipal liability under sec. 1 of the Civil Rights Act of 1871 created a similar Hobson's choice, we might conclude, as *Monroe* did, that Congress could not have intended municipalities to be among the "persons" to which that section applied. But this is not the case.

First, opponents expressly distinguished between imposing an obligation to keep the peace and merely imposing civil liability for damages on a municipality that was obligated by state law to keep the peace, but which had not in violation of the Fourteenth Amendment. Representative Poland, for example, reasoning from Contract Clause precedents, indicated that Congress could constitutionally confer jurisdiction on the federal courts to entertain suits seeking to hold municipalities

36 "The Supreme Court of the United States has decided repeatedly that Congress can impose no duty on State officer. Globe 799 (Rep. Farnsworth). See also *id.*, at 788-789 (Rep. Kerr).

37 See, e.g., *id.*, at 764 (Sen.Davis); *ibid. (Sen. Casserly); id.* at 772 (Sen. Thurman) (reciting logic of Day); *id.* at 777 (Sen. Frelinghuysen); *id., at* 788-789 (Rep Kerr) (reciting logic of Day);

38 *Warren v. Paul,* 22 Ind. 276 (1864); *Jones v. Estate of Keep,* 19 Wis 369 (1865); ; (Field v. Close, 15 Mich. 505 (1867); *Union Bank v. Hill,* 43 Tenn. 325 (1866); *Smith v. Short,* 40 Ala. 385 (1867).

38 See Globe 764 (Sen. Davis); *ibid.* (Sen Casserly). See also T. Cooley. Constitutional Limitations 483-484 (1871 ed.).

liable for using their authorized powers in violation of the Constitution-which is as far as section 1 of the Civil Rights Act. went:

> :I presume . . . . that where a State had imposed a duty [to keep the peace] upon [a] municipality . . . and action would be allowed to be maintained against them in the courts of the United States under the ordinary restrictions as to jurisdiction. But the enforcing a liability, existing by their own contract, or by a State law, in the courts, is a very widely different thing from devolving a new duty or liability upon them by the national Government, which has no power either to create or destroy them, and no power or control over them whatever." Globe 794.

Representative Burchard agreed:

> "[T]here is no duty imposed by the Constitution of the United States, or usually by State laws, upon a county to protect the people of that county against the commission of the offenses herein enumerated, such as the burning of buildings or any other injury to property or injury to person. Police powers are not conferred upon counties as corporations; they are conferred upon cities that have qualified legislative power. And so far as cities are concerned, where the equal protection required to be afforded by a State is imposed upon a city by State laws, perhaps the United States courts could enforce its performance. But counties . . . do not have any control of the police.... *Id* at 795.

See also the views of Rep. Willard, discussed at n.30, *supra.*

Second, the doctrine of dual sovereignty apparently put no limit on the power of federal courts to enforce the Constitution against municipalities that violated it. Under the theory of dual sovereignty set out in *Prigg,* this is quite understandable. So long as federal courts were vindicating the Federal Consti tution, they were providing the "positive" government action required to protect federal constitutional rights and no question raised of enlisting the States in "positive" action.

The limits of the principles announced in Dennisoin and Day are not so well defined in logic, but are clear as a matter of
History. It must be remembered that the same Court which rendered *Day* also vigorously enforced the Contract Clause against municipalities-an enforcement effort which included
Various forms of "positive" relief, such as ordering that taxes be levied and collected to discharge federal-court judgments;
Once a constitutional infraction was found. 40 Thus federal judicial enforcement of the Constitution's express limits on state power, since it was done so frequently, must , notwithstanding anything said in *Dennison* or *Day*, have been permissible, at least so long as the
Interpretation of the Constitution was left in the hands of the judiciary. Since section1 of the Civil Rights Act simply conferred jurisdiction on the federal courts to enforce section 1 of the Fourteenth Amendment-a situation precisely analogous to the grant of diversity jurisdiction under which the Contract clause was enforced against municipalities-there is no reason to suppose that

40 See cases cited in n.28 *supra.* Since this Court granted unquestionably "positive" relief in Contract Clause cases, it appears that the distinction between the Sherman Amendment and those cases was not that the former created a positive obligation whereas the latter imposed only a negative restraint. Instead, the distinction must have been that a violation of the Constitution was the predicate for "positive" relief in the Contract Clause cases, whereas the Sherman Amendment imposed damages without regard to whether a local government was in any way at fault for the breach of the peace for which it was to be held for damages. See *supra,* at 668. While no one stated this distinction expressly during the debates, the inference is strong that Congressmen in 1871 would have drawn this distinction since it explains why Representative Poland, B urchard, and Willard, see *Supra* at 680, could oppose the amendment while at the same time saying that the Federal Government might impose damages on a local government that had defaulted in a state-imposed duty to keep the peace, and it also explains why everyone agreed that a state or municipal officer could constitutionally be held liable under section 1 for violations of the Constitution.
See *infra,* at 682-683.

Opponents of the Sherman amendment would have found any constitutional barrier to section 1 suits against municipalities.

Finally, the very votes of those Members of Congress, who Opposed the Sherman amendment but who had voted for section 1, Confirm that the liability imposed by section 1 was something very Different from that imposed by the amendment. Section 1 Without question could be used to obtain a damages judgment against state or municipal officials who violated federal constitutional rights while acting under color of law.[41] However, for *Prigg-Dennison-Day* purposes, as Blair & others Recognized,[42] Officers and agents –including corporate agents-of the State: Both were state instrumentalities and State could be impeded no matter over which sort of instrumentality the Federal Government sought to assert its power. *Dennison* and *Day*, after all were not suits against municipalities but against officers, and Blair was quite conscious that he was extending these cases by applying them to municipal corporations.[43] Nonetheless, Senator Thurman, who gave the most exhaustive critique of section 1-*inter alia* , complaining that it would be applied to state officers, see Globe App. 217-and who opposed both section 1 and Sherman amendment, the later on *Prigg* grounds, agreed unequivocally that section was

41 See, e.g., Globe 334 (Rep. Hoar); *id.*, at 365 (Re. Arthur); *id.*, at 367-368 (Rep. Sheldon); *id.*, at 385 (Rep. Lewis); Globe App 217 (Sen. Thurman). In addition, officers were included among those who could be sued under the second conference substitute for the Sherman amendment. See Globe 805 (exchange between Rep. Willard and Rep. Shellabarger). There were no constitutional objections to the second report.

42 See *id.*, 795 (Rep. Blair); *id.*, at 788 (Rep. Kerr); *id.*, at 795 (Rep. Burchard); *id.*, at 799 (Rep. Farnsworth).

43 [W]e cannot command a State officer to do any duty whatever, as such; and I ask . . . the difference between that and commanding a municipality . . . ." *id.*, at 795.

Constitutional [44] Those who voted for section 1 must similarly have believed in its constitutionality despite *Prigg* , *Dennison* and *Day*.

C. Debate on section 1 of the Civil Rights Bill

From the foregoing discussion, it is readily apparent that Nothing said in debate on the Sherman amendment would have prevented holding a municipality liable under section 1 of the Civil Rights Act for its own violations of the Fourteenth Amendment. The question remains, however, whether the general language Describing those to be liable under section 1- "any person"- Covers more than natural persons. An examination of the debate On section 1 and application of appropriate rules of construction Of the debate on section 1 and application of appropriate rules of Construction show unequivocally that section 1 was intended to Cover legal as well as natural persons.

Representative Shellabarger was the first to explain the function Of section 1:

> "[section 1] not only provides a civil remedy for persons whose former condition may have been that of slaves, but also to all people where, under color of State law they or any of them may be deprived of rights to which they are entitled under the Constritution by reason and virtue of their national citizenship." Globe App 68.

By extending a remedy to all people, including white, section 1 Went beyond the mischief to which the remaining sections Of the 1871 Act were addressed. Representative Shellabarger Also stated without reservation that the constitutionality of Section 2 of the Civil Rights Act, and that the former had been

44 See Globe App. 216-217, quoted in n. 45, *infra*. In 1880, moreover, When the question of the limits of the *Prigg* principle was squarely presented in *Ex Parte Virginia,* 100 U.S. 339, this Court held that *Dennison* and *Day* And the principle of federalism for which they stand did not prohibit Federal enforcement of section 5 of the Fourteenth Amendment through Suits directed to state officers. See 100 U.S., at 345-348

Approved by "the Supreme Courts of at least three States of This union" and by Mr. Justice Swayne, sitting on circuit, who had concluded: "We have no doubt of the constitutionality of every provision of this act.'" Globe App. 68. Representative Shellabarger then went on to describe how the courts would and Should interpret section 1:

> " This act is remedial, and in aid of the preservation of human liberty and human rights. All statutes and constitutional provisions authorizing such statutes are liberally and beneficently construed. It would be most strange and, in civilized law, monstrous were this not the rule of interpretation. As has been again and again decided by your own Supreme Court of the United States, and everywhere else where there is wise judicial interpretation, the largest latitude consistent with the words employed is uniformly given in construing such statutes and constitutional provisions as are meant to protect and defend and give remedies for their wrongs to all the people.... Chief Justice Jay and also Story say:
>
> "Where a power is remedial in its nature there is much reason to contend that it ought to be construed liberally, and is generally adopted in the interpretation of laws.'- 1 Story on Constitution, sec. 429."
>
> Globe App., at 68.

The sentiments expressed in Representative Shellabarger's Opening speech were echoed by Senator Edmunds, the manager of H.R. 320 in the Senate:

> "The first section is one that I believe nobody objects to, as defining the rights secured by the Constitution of the United States when they are assailed by any State law or under color of any State law, and it is merely carrying out the principles of the civil rights bill [of 1866], which have since become a part of the constitution." Globe 568

"[Section 1 is] so very simple and really reenact[s] the Constitution." *Id., at 569.*

And he agreed that he bill "secure[d] the rights of white Men as much as colored men." *Id.,* at 696

In both Houses, statements of the supporters of section corroborated that Congress, in enacting section 1, intended to give a Broad remedy for violations of federally protected civil rights. [45] Moreover, since municipalities through their official

45 Representative Bingham, the author of section 1 of the Fourteenth Amendment, for example, declared the bill's purpose to be "the enforcement of the Constitution on behalf of every individual citizen of the Republic . . . to the extent of the rights guarantied to him by the Constitution." Globe App. 81. He continued:

"The States never had the right, though they had the power, to inflict wrongs upon free citizens by a denial of the full protection of the laws... [And] the States did deny to citizens the equal protection of the laws, they did deny the rights of citizens under the Constitution, and except to the extent of the express limitations upon the States, as I have shown, the citizens had no remedy . . . . They took property without compensation, and he had no remedy. .... They restricted the freedom of the press and he had no remedy. The restricted the freedom of speech, and he had no remedy. They restricted the rights of conscience, and he had no remedy .... Who dare say, now that the Constitution has been amended, that the nation cannot by law provide against all such abuses and denials of right as these in the States and by States, or combinations of persons? *Id.,* at 85.

Representative Perry, commenting on Congress' action in passing the Civil rights bill also stated:

"Now. by our actions on this bill we have asserted as fully as we can assert the mischief intended to be remedied. We have asserted as clearly as we can assert our belief that it is the duty of Congress to redress that mischief. We have also asserted as fully as we can assert the constitutional right of Congress to legislate." Globe 800.

See also *id.*, 376 (Rep. Lowe); *id.*, at 428-429 (Rep. Beatty); *id.*, At 448 (Rep. Butler); *id.*, at 475 –477 (Rep. Dawes); *id.*, at 578-579 (Sen. Trumbull); *id.*, 609 (Sen Pool); Globe app. 182 (Rep. Mercur).

Other supporters were quite clear that section 1 of the Act extended a Remedy not only where a State had passed an unconstitutional statute But also where officers of the State were deliberately indifferent to the

Acts could, equally with natural persons, create the harms intended to be remedied by section 1, and, further, since Congress intended section 1 to be broadly construed, there is not reason to suppose that municipal corporations would have been excluded from the sweep of section 1. Cf., *e.g.., Exparte Virginia*, 100 U.S. 339, 346-347 (1880); *Home Tel & Tel. Co. v. Los Angeles,* 227 U.S. 278, 286-287, 294-296 (1913). One need not rely on this inference alone, however, for the debates show that Members of Congress understood "persons" to include municipal Corporations.

Representative Bingham, for example, in discussing section 1 of the bill, explained that he had drafted section 1 of the Fourteenth Amendment with the case of *Barfron v. Mayor of Baltimore,* 7 Pet. 243 (1833), especially in mind. "In [that] case the

Black citizens:

"But the chief complaint is . . . [that] by a systematic maladministration of [state law], or a neglect or refusal to enforce their provisions, a portion of the people are denied equal protection under them. Whenever such a state of facts is clearly made out, I believe [sec. 5 of the Fourteenth Amendment] empowers Congress to step in and provide for doing justice to those persons who are thus denied equal protection." *Id.*, at 153 (Rep. Garfield). See also *Monroe v. Pape, 365 U. Sl., at 171-187.*

Importantly for our inquiry, even the opponents of section 1 agreed that it was Constitutional and, further, that it swept very broadly. Thus, Senator Thurman, who Gave the most exhaustive critique of Section 1, said:

"This section relates wholly to civil suits. . . . Its whole effect is to give to the Federal Judiciary that which now does not belong to it-a *jurisdiction that may be constitutionally conferred upon it, I grant,* but that has never yet been conferred upon it. It authorizes any person who is deprived of any right, privilege, or immunity secured to him by the Constitution of the United States, to bring an action against the wrong-doer in the Federal courts, and that without any limit whatsoever as to the amount in controversy...

"[T]here is no limitation whatsoever upon the terms that are employed [in the bill], and they are as comprehensive as can be used." Globe App. 21`6-217 (emphasis added).

City had taken private property for public use, without compensation . . . , and there was no redress for the wrong . . ." Globe App. 84 (emphasis added). Bingham's further remarks clearly indicate his view that such takings by cities, as had occurred in Barron, would be redressable under section 1 of the bill. See Glob e App. 85. More generally, and as Bingham's Remarks confirm, section of the bill would logically be the vehicle by which Congress provided redress for takings, since that section Provided the only civil remedy for Fourteenth Amendment violations and that Amendment unequivocally prohibited uncompensated Takings. [46] Given this purpose, it beggars reason to suppose that Congress would have exempted municipalities from suit, insisting Instead that compensation for a taking come from an officer in his individual capacity rather than from the government unit that had the benefit of the property taken.[47]

In addition, by 1871, it was well understood that corporations should be treated as natural persons for virtually all purposes of constitutional and statutory analysis. This had not always been So. When this Court first considered the question of the status of corporations, Mr. Chief Justice Marshall, writing for the Court, denied that corporations "as such" were persons as that term was used in Art. III and the Judiciary Act of 1789. See *Bank of the United States v. Deveaux,* 5 Cranch 61, 86 (1809).[48] By 1844, however, the *Devaux doctrine was unhesitatingly abandoned:*

"[A] corporation created by and doing business in a par-

46 ee 2J. Story, Commentaries on the Constitution of the United States Section 1956 (T. Cooley ed. 1873)

47 Indeed the federal courts found no obstacle to awards of damages against municipalities for common-law takings. See *Summer v. Philadelphia,* 23 F. Cas. 392 (No. 13,611) (DD ED Pa. 1873) (awarding damages of $2,273.86 and costs of $346.35 against the city of Philadelphia).

48 Nonetheless, suits could be brought in federal court if the natural Persons who were member of the corporation were of diverse citizenship from Other parties to the litigation. See 5 Cranch, at 91.

> Ticular state, is to be deemed *to all intents and purposes As a person,* although an artificial person, . . . capable of Being treated as a citizen of that state, as much as a Natural person." *Louisville R. Co. V Letson, 2* How. 497, 558 (1844) (emphasis added) discussed in Globe 752.

And only two years before the debates on the Civil Rights Act, in *Cowels v. Mercer County,* 7 Wall. 118, 121 (1869), the *Letson* principle was automatically and without discussion extended to municipal corporations. Under this doctrine, municipal corpoations were routinely sued in the federal courts [49] and this fact Was well-known to members of Congress. [50]

That the "usual" meaning of the word "person" would extend To municipal corporations is also evidenced by an Act of Congress which had been passed only months before the Civil Rights Act was passed. This Act provided that

> "in all acts hereafter passed . . . the word "person" may extend and be applied to bodies politic and corporate ..... unless the context shows that such words were intended to be used in a more limited sense." Act of Feb. 25, 1871 section 2, 16 Stat. 431.

Municipal Corporations in 1871 were included within the phrase "bodies politic and corporate" [51] and accordingly, the

49 See n. 28, *supra.*

50 *See, e.g.,* Globe 777 (Sen. Sherman); *id.,* at 752 (Rep. Shellabarger) *("[C]ounties,* cities, and corporations of all sort, after years of judicial conflict, have become thoroughly established to be an individual or person or entity of the personal existence, of which as a citizen, individual, or inhabitant, the United States Constitution does take note an endow with faculty to sue and be sued in the courts of the United States").

51 See *Northwest Fertilizing Co. v. Hyde Park,* 18 F. Cas. 393, 394 (No. 10,336) (CC ND Ill. 1873); 2 J. Kent, Commentaries on American Law 278-279 (12th O. W. Holmes ed. 1873). See also *United States v. Maurice,* 2 Brock. 96, 109 (CC Va. 1823) (Marshall, C.J.) ("The United States is a government, and, consequently, a body politic and corporate"); Apps. D and E to Brief for Petitioner in *Monroe v. Pape, O. T. 1960,*

'plain meaning" of § 1 is that local government bodies were to be included within the ambit of the persons who could be sued under § 1 of the Civil Rights Act. Indeed, a Circuit Judge, writing in 1873 in what is apparently the first reported case under § 1, read the Dictionary Act in precisely this way in a case involving a corporate plaintiff and a municipal defendant." See *Northwestern Fertilizing Co. v. Hyde Park,* 18 F. Cas. 393, 394 (No. 10,336) (CC ND Ill. 1873)."

No. 39 (collecting state statutes which, in 1871, defined municipal corporations as bodies politic and corporate).

[sa] The court also noted that there was no discernible reason why persons injured by municipal corporations should not be able to recover. See 18 F. Cas., at 394.

[s] In considering the effect of the Act of Feb. 25, 1871, in *Monroe,* however, Mr. Justice Douglas, apparently focusing on the word "may," stated: "[T]his definition [of person] is merely an allowable, not a mandatory, one." 365 U. S., at 191. A review of the legislative history of the Dictionary Act shows this conclusion to be incorrect.

There is no express reference in the legislative history to the definition of "person," but Senator Trumbull, the Act's sponsor, discussed the phrase "words importing the masculine gender may be applied to. females," (emphasis added), which immediately precedes the definition of "person," and stated:

"The only object [of the Act] is to get rid of a great deal of verbosity in our statutes by providing that when the word `he' is used it shall include females as well as males." Cong. Globe, 41st Cong., 3d Sess., 775 (1871) (emphasis added).

Thus, in Trumbull's view the word "may" meant "shall" Such a mandatory use of the extended meanings of the words defined by the Act is also required for it to perform its intended function-to be a guide to "rules of construction" of Acts of Congress. See ibid. (remarks of Sen. Trumbull). Were the defined words "allowable, [but] not mandatory" constructions, as *Monroe* suggests, there would be no."rules" at all. Instead, Congress must have intended the definitions of the Act to apply across-the-board except where the Act by its terms called for a deviation from this practices-"[where] the context shows that [defined] words were to be used in a more limited sense." Certainly this is how the *Northwestern Fertilizing* court viewed the matter. Since there is nothing in the "'context" of § i of the Civil Rights Act calling for a restricted

Our analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies." Local governing bodies," therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to he unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 "person," by the very terms of the statute, may be sued for constitu-

interpretation of the word "person," the language of that section should prima facie be construed to include "bodies politic" among the entities that could be sued.

54 There is certainly no constitutional impediment to municipal liability. "The Tenth Amendment's reservation of nondelegated powers to the States is not implicated by a federal-court judgment enforcing the express prohibitions of unlawful state conduct enacted by the Fourteenth Amendment." *Milliken v. Bradley, 433 U. S. 267, 291 (1977) ; see* Ex *parte Virginia, 100* U. S., at *347-348.* For this reason, *National League of Cities v. Usery, 426 U. S. 833 (1976),* is irrelevant to our consideration of this case. Nor is there any basis for concluding that the Eleventh Amendment is a bar to municipal liability. See, *e. g., Fitzpatrick v. Bitzer, 427 U. S. 445, 456 (1976); Lincoln County v. Luning, 133 U. S. 529, 530 (1890).* Our holding today is, of course, limited to local government units which are not considered part of the State for Eleventh Amendment purposes.

55 Since official-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent-at least where Eleventh Amendment considerations do not control analysisour holding today that local governments can be sued under § 1983 necessarily decides that local government officials sued in their official capacities are "persons" under § 1953 in those cases in whioh, as here, a local government would be suable in its own name.

tional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's *official decisionmaking* channels. As Mr. Justice Harlan, writing for the Court, said in *Adickes v. S. H. Kress & Co., 398 U. S. 144, 167-168 (1970) : "Congress* included customs and usages [in § 1983*]* because of the persistent and widespread discriminatory practices of state officials . . . . Although not authorized by written law, such practices of state officials could well be so permanent and well settled as to constitute a `custom or usage' with the force of law." [oo]

On the other hand, the language of § 1983, read against the background of the same legislative history, compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, we conclude that a municipality cannot be held liable solely because it employs a tortfeasor-or, in other words, a municipality cannot be held liable under § 1983 on a *respondedt superior* theory. .

We begin with the language of § 1983 as originally passed:

> *"[A]ny person who,* under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall *subject, or cause to be subjected,* any person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such

[oo] See also Mr. Justice Frankfurter's statement for the Court *in Nashville, C. & St. L. R. Co. v. Browning, 310 U. S. 362, 369 (1940):*

"It would be a narrow conception of jurisprudence to confine the notion of `laws' to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice . . . can establish what is state law. The Equal Protection Clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains, are often tougher and truer law than the dead words of the written text."

law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress . . . ." 17 Stat. 13 (emphasis added).

The italicized language plainly imposes liability on a government that, under color of some official policy, "causes" an employee to violate another's constitutional rights. At the same time, that language cannot be easily read to impose liability vicariously on governing bodies solely on the basis of the existence of an employer-employee relationship with a tortfeasor. Indeed, the fact that Congress did specifically provide that A's tort became B's liability if B "caused" A to subject another to a tort suggests that Congress did not intend § 1983 liability to attach where such causation was absent." See Rizzo v. *Goode, 423 U. S. 362,* 370-371 (1976).

[9] Support for such a conclusion can be found in the legislative history. As we have indicated, there is virtually no discussion of § 1 of the Civil Rights Act. Again, however, Congress' treatment of the Sherman amendment gives a clue to whether it would have desired to impose *respondeat* superior liability.

The primary constitutional justification for the Sherman amendment was that it was a necessary and proper remedy for the failure of localities to protect citizens as the Privileges or Immunities Clause of the Fourteenth Amendment required. See supra, at 670-673. And according to Sherman, Shellabarger, and Edmunds, the amendment came into play only when a locality was at fault or had knowingly neglected its duty to provide protection. See Globe 761 (Sen. Sherman); *id.,* at 756 (Sen. Edmunds); id., at 751-752 (Rep. Shellabarger). But other proponents of the amendment apparently viewed it as a form of vicarious liability for the unlawful acts of the citizens of the locality. See id., at 792 (Rep. Butler). And whether intended or not, the amendment as drafted did impose a species of vicarious liability on municipalities since it could be construed to impose liability even if a municipality did not know of an impending or ensuing riot or did not have the wherewithal to do anything about it. Indeed, the amendment held a municipality liable even if it had done everything in its

Equally important, creation of a federal law of *respondeat superior* would have raised all the constitutional problems associated with the obligation to keep the peace, an obligation Congress chose not to impose because it thought imposition of such an obligation unconstitutional. To this day, there is disagreement about the basis for imposing liability on an employer for the torts of an employee when the sole nexus between the employer and the tort is the fact of the employeremployee relationship. See W. Prosser, Law of Torts § 69, p. 459 (4th ed. 1971). Nonetheless, two justifications tend to stand out. First is the common-sense notion that no matter how blameless an employer appears to be in an individual case, accidents might nonetheless be reduced if employers had to bear the cost of accidents. See, e. g., ibid.; 2 F. Harper & F. James, Law of Torts, § 26.3, pp. 1368-1369 (1956). Second is the argument that the cost of accidents should be

power to curb the riot. See *supra*, at 668; Globe 761 (Sen. Stevenson); *id.*, at 771 (Sen. Thurman); *id.*, at 788 (Rep. Kerr); id., at 791 (Rep. Willard). While the first conference substitute was rejected principally on constitutional grounds, see *id.*, at 804 (Rep. Poland), it is plain from the text of the second conference substitute-which limited liability to those who, having the power to intervene against Ku Klux Klan violence, "neglect[ed] or refuse[d] so to do," see Appendix to this opinion, *infra*, at 704, and which was enacted as § 6 of the 1871 Act and is now codified as 42 U. S. C. § 1986-that Congress also rejected those elements of vicarious liability contained in the first conference substitute even while accepting the basic principle that the inhabitants of a community were bound to provide protection against the Ku Klux Klan. Strictly speaking, of course, the fact that Congress refused to impose vicarious liability for the wrongs of a few private citizens does not conclusively establish that it would similarly have refused to impose vicarious liability for the torts of a municipality's employees. Nonetheless, when Congress' rejection of the only form of vicarious liability presented to it is combined with the absence of any language in § 1983 which can easily be construed to create *respondeat superior* liability, the inference that Congress did not intend to impose such liability is quite strong.

spread to the community as a whole on an insurance theory. See, e. *g.*, *id., § 26.5;* Prosser, supra, at *459.58*

The first justification is of the same sort that was offered for statutes like the Sherman amendment: "The obligation to make compensation for injury resulting from riot is, by arbitrary enactment of statutes, affirmatory law, and the reason of passing the statute is to secure a more perfect police regulation." Globe *777* (Sew. Frelinghuysen). This justification was obviously insufficient to sustain the amendment against perceived constitutional difficulties and there is no reason to suppose that a more general liability imposed for a similar reason would have been thought less constitutionally objectionable. The second justification was similarly put forward as a justification for the Sherman amendment: "we do not look upon [the Sherman amendment] as a punishment . . . . It is a mutual insurance." *Id.*, at *792* (Rep. Butler). Again, this justification was insufficient to sustain the amendment.

We conclude, therefore, that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983. Since this case unquestionably involves official policy as the moving force of the constitutional violation found by the District Court, see supra, at

[13] A third justification, often cited but which on examination is apparently insufficient to justify the doctrine of *respoandeat superior,* see, *e. g.,* 2 F. Harper cC F. James, § 26.3, is that liability follows the right to control the actions of a tortfeasor. By our decision in Rizzo *v. Goode,* 423 U. S. 362 (1976), we would appear to have decided that the mere right to control without any control or direction having been exercised and without any failure to supervise is not enough to support § 1983 liability. See 423 U. S., at 370-371.

660-662, and n. 2, we must reverse the judgment below. In so doing, we have no occasion to address, and do not address, what the full contours of municipal liability under § 1983 may be. We have attempted only to sketch so much of the § 1983 cause of action against a local government as is apparent from the history of the 1871 Act and our prior cases, and we expressly leave further development of this action to another day.

III

Although we have stated that *stare decisis* has more force in statutory analysis than in constitutional adjudication because, in the former situation, Congress can correct our mistakes through legislation, see, *e. g., Edelman v. Jordan,* 415 U. S. 651, 671, and n. 14 (1974), we have never applied *stare decisis* mechanically to prohibit overruling our earlier decisions determining the meaning of statutes. See, *e. g., Continental T. V., Inc. v. GTE Sylvania Inc.,* 433 U. S. 36, 47-49 (1977); *Burnet v. Coronado Oil & Gas Co.,* 285 U. S. 393, 406 n. 1 (1932) (Brandeis, J., dissenting) (collecting cases). Nor is this a case where we should "place on the shoulders of Congress the burden of the Court's own error." *Girouard v. United States,* 328 U.S. 61, 70 (1946).

First, *Monroe v. Pape,* insofar as it completely immunizes municipalities from suit under § 1983, was a departure from prior practice. See, *e. g., Northwestern Fertilizing Co. v. Hyde Park,* 18 F. Cas. 393 (No. 10,336) (CC ND Ill. 1873); *City of Manchester v. Leiby,* 117 F. 2d 661 (CA1 1941); *Hannan v. City of Haverhill,* 120 F. 2d 87 (CA1 1941); *Douglas v. City of Jeannette,* 319 U. S. 157 (1943); *Holmes v. Atlanta,* 350 U. S. 879 (1955), in each of which municipalities were defendants in § 1983 suits." Moreover, the constitutional de-

" Each case cited by Monroe, see 365 U. S., at 191 n. 50, as consistent with the position that local governments were not § 1983 "persons" reached its conclusion by assuming that state-law immunities overrode the § 1983 cause of action. This has never been the law.

feet that led to the rejection of the Sherman amendment would not have distinguished between municipalities and school boards, each of which is an instrumentality of state administration. See *supra*, at 673-682. For this reason, our cases-decided both before and after *Monroe*, see n. 5, *supra*holding school boards liable in § 1983 actions are inconsistent with *Monroe*, especially as *Monroe's* immunizing principle was extended to suits for injunctive relief in *City of Kenosha v. Bruno*, 412 U. S. 507 (1973).° And although in many of these cases jurisdiction was not questioned, we ought not "disregard the implications of an exercise of judicial authority assumed to be proper for [100] years." *Brown Shoe Co. v. United States*, 370 U. S. 294, 307 (1962) ; see *Bank of the United States v. Deveaux*, 5 Cranch, at 88 (Marshall, C. J.) ("Those decisions are not cited as authority . . . but they have much weight, as they show that this point neither occurred to the bar or the bench"). Thus, while we have reaffirmed *Monroe* without further examination on three occasions,"' it can scarcely be said that *Monroe is so* consistent with the warp and woof of civil rights law as to be beyond question.

Second, the principle of blanket immunity established in *Monroe* cannot be cabined short of school boards. Yet such an extension would itself be inconsistent with recent expressions of congressional intent. In the wake of our decisions, Congress not only has shown no hostility to federal-court decisions against school boards, but it has indeed rejected efforts to strip the federal courts of jurisdiction over school boards. [12] Moreover, recognizing that school boards are often

[co] Although many suits against school boards also include private individuals as parties, the "principal defendant is usually the local board of education or school board" *Milliken v. Bradley, 433 U. S., at 292-293* (POWELL, J., concurring in judgment).

[°1] *Moor v. County of Alameda, 411 U. S. 693 (1973) ; City of Kenosha v. Bruno, 412 U. S. 507 (1973); Aldinger v. Howard, 427 U. S. 1 (1976).*

[62] During the heyday of the furor over busing, both the House and the

defendants in school desegregation suits; which have almost without exception been § 1983 suits, Congress has twice passed legislation authorizing grants to school boards to assist them in complying with federal-court decrees.°3 Finally, in

Senate refused to adopt bills that would have removed from the federal courts jurisdiction

"to make any decision, enter any judgment, or issue any order requiring any *school board* to make any change in the racial composition of the student body at any public school or in any class at any public school to which students are assigned in conformity with a freedom of choice system, or requiring any school *board* to transport any students from one public school to another public school or from one place to another place or from one school district to another school district in order to effect a change in the racial composition of the student body at any school or place or in any school district, or denying to any student the right or privilege of attending any public school or class at any public school chosen by the parent of such student in conformity with a freedom of choice system, or requiring any school *board* to close any school and transfer the students from the closed school to any other school for the purpose of altering the racial composition of the student body at any public school, or precluding any *school board* from carrying into effect any provision of any contract between it and any member of the faculty of any public school it operates specifying the public school where the member of the faculty is to perform his or her duties under the contract." S. 1737, 93d Cong., 1st Secs., § 1207 (1973) (emphasis added).

Other bills designed either completely to remove the federal courts from the school desegregation controversy, S. 287, 93d Cong., 1st Sess. (1973), or to limit the ability of federal courts to subject school boards to remedial orders in desegregation cases, S. 619, 93d Cong., 1st Sess. (1973) ; S. 179, 93d Cong., 1st Sess., § 2 (a) (1973) ; H. R. 13534, 92d Cong., 2d Sess., § 1 (1972), have similarly failed.

c' In 1972, spurred by a finding "that the process of eliminating or preventing minority group isolation and improving the quality of education for all children often involves the expenditure of additional funds to which

local educational agencies do not have access," 86 Stat. 354, 20 U. S. C. § 1601 (a) (1976 ed.), Congress passed the Emergency School Aid Act. Section 706 (a) (1) (A) (i) of that Act, 20 U. S. C. § 1605 (a) (1) (A) (i) (1976 ed.), authorizes the Assistant Secretary

"to make a grant to, or a contract with, *a local educational agency (w]hick is implementing a plan . . . which has been undertaken pursuant to a final*

regard to the Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, 42 U. S. C. § 1988 (1976 ed.), which allows prevailing parties (in the discretion of the court) in § 1983 suits

order issued by a court of the United States . . . which requires the desegregation of minority group segregated children or faculty in the elementary and secondary schools of such agency, or otherwise requires the elimination or reduction of minority group isolation in such schools." (Emphasis added.)

A "local educational agency" is defined by 20 U. S. C. § 1619 (8) (1976 ed.) as "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a federally recognized Indian reservation, or such combination of school districts, or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies . . . ." Congress thus clearly recognized that school boards were often parties to federal school desegregation suits. In § 718 of the Act, 86 Stat. 369, 20 U. S. C. § 1617 (1976 ed.), Congress gave its explicit approval to the institution of federal desegregation suits against school boards-presumably under § 1983. Section 718 provides:

"Upon the entry of a final order by a court of the United States against a local educational agency . . . for discrimination on the basis of race, color, or national origin in violation of . . . the fourteenth amendment to the Constitution of the United States . . . the court . . . may allow the prevailing party, other than the United States, a reasonable atfomey's fee as part of the costs." (Emphasis added.)

Two years later in the Equal Educational Opportunities Act of 1974, Congress found that "the implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amounts of funds, thereby depleting their financial resources . . . ." 20 U. S. C. § 1702 (a.) (3) (1976 ed.). (Emphasis added.) Congress did not respond by declaring that school boards were not subject to suit under § 1983 or any other federal statute, "but simply [legislated] revised evidentiary standards and remedial priorities to be employed by the courts in deciding such cases." Brief for National Education Assn. et al. as Amici Curiae 15-16. Indeed, Congress expressly reiterated that a. cause of action, cognizable in the federal courts, exists for discrimination in the public school context. 20 U. S. C. §§ 1703,

to obtain attorney's fees from the losing parties, the Senate stated

> "[D]efendants in these cases are often State or local *bodies* or State or local officials. In such cases it is intended that the attorneys' fees, like other items of costs, will be collected either directly from the official, *in his official capacity,* from funds of his agency or under his control, or *from the State or local government (whether or not the agency or government is a named party).*" S. Rep. No. 94-1011, p. 6 (1976) (emphasis added; footnotes omitted).

Far from showing that Congress has relied on *Monroe,* therefore, events since 1961 show that Congress has refused to extend the benefits of *Monroe* to school boards and has attempted to allow awards of attorney's fees against local governments even though *Monroe, City of Kenosha v. Bruno,* and *Aldinger v. Howard,* 427 U. S. 1 (1976), have made the joinder of such governments impossible."

Third, municipalities can assert no reliance claim which can

1706, 1708, 1710, 1718 (1976 ed.). The Act assumes that school boards will usually be the defendants in such suits. For example, § 211 of the Act, 88 Stat. 516, as set forth in 20 U. S. C. § 1710 (1976 ed.), provides:

"The Attorney General shall not institute a civil action under section 1706 of this title [which allows for suit by both private parties and the Attorney General to redress discrimination in public education] before he-

"(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of part 2 [the prohibitions against discrimination in public education]." Section 219 of the Act, 20 U. S. C. § 1718 (1976 ed-), provides for the termination of court-ordered busing "if the court finds the defendant educational agency has satisfied the requirements of the fifth or fourteenth amendments to the Constitution, whichever is applicable, and will continue to be in compliance with the requirements thereof."

[04] Whether Congress' attempt is in fact effective is the subject of Hutto v. *Finney,* 0. T. 1977, No. 76-1660, cert. granted, 434 U. S. 901, and therefore we express no view on it here.

support an absolute immunity. As Mr. Justice Frankfurter said in *Monroe*, "[t]his is not an area of commercial law in which, presumably, individuals may have arranged their affairs in reliance on the expected stability of decision." 365 U. S., at 221-222 (dissenting in part). Indeed, municipalities simply cannot "arrange their affairs" on an assumption that they can violate constitutional rights indefinitely since injunctive suits against local officials under § 1983 would prohibit any such arrangement. And it scarcely need be mentioned that nothing in *Monroe* encourages municipalities to violate constitutional rights or even suggests that such violations are anything other than completely wrong.

Finally, even under the most stringent test for the propriety of overruling a statutory decision proposed by Mr. Justice Harlan in *Monroe* [5] "that it appear beyond doubt from the legislative history of the 1871 statute that *[Monroe]* mis apprehended the meaning of the [section]," 365 U. S., at 192 (concurring opinion)-the overruling of *Monroe* insofar as it holds that local governments are not "persons" who may be defendants in § 1983 suits is clearly proper. It is simply beyond doubt that, under the 1871 Congress' view of the law, were § 1983 liability unconstitutional as to local governments, it would have been equally unconstitutional as to state offi cers. Yet everyone-proponents and opponents alike-knew § 1983 would be applied to state officers and nonetheless stated that § 1983 was constitutional. See supra, at 680-682. And, moreover, there can be no doubt that § 1 of the Civil Rights Act was intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected

[5] We note, however, that Mr. Justice Harlan's test has not been expressly adopted by this Court. Moreover, that test is based on two factors: *stare decisis* and "indications of congressional acceptance of this Court's earlier interpretation [of the statute in question]." 365 U. S., at 192. As we have explained, the second consideration is not present in this case.

rights. Therefore, absent a clear statement in the legislative history supporting the conclusion that § 1 was not to apply to the official acts of a municipal corporation-which simply is not present-there is no justification for excluding municipalities from the "persons" covered by § 1.

For the reasons stated above, therefore, we hold that *stare decisis* does not bar our overruling of *Monroe* insofar as it is inconsistent with Parts I and II of this opinion.ag

IV

Since the question whether local government bodies should be afforded some form of official immunity was not presented as a question to be decided on this petition and was not briefed by the parties or addressed by the courts below, we express no views on the scope of any municipal immunity beyond holding that municipal bodies sued u:ider § 1983 cannot be entitled to an absolute immunity, lest our decision that such bodies are subject to suit under § 1983 "be drained of meaning," *Scheuer v. Rhodes, 416* U. S. 232, 248 (1974). Cf. *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 U. S. 388, 397-398 (1971).

ao No useful purpose would be served by an attempt at this late date to determine whether Monroe was correct on its facts. Similarly, since this case clearly involves official policy and does not involve respondeat superior, we do not assay a view on how our cases which have relied on that aspect of Monroe that is overruled today-Moor v. County of Alameda, 411 U. S. 693 (1973); City *of* Kenosha v. *Bruno'* 412 U. 5.507 (1973); and Aldinger v. Howard, 427 U. S. 1 (1976)-should have been decided on a correct view of § 1983. Nothing we say today affects the conclusion reached in Moor, see 411 U. S., at 703-704, that 42 U. S. C. § 1988 cannot be used to create a federal cause of action where § 1983 does not otherwise provide one, or the conclusion reached in City *of* Kenosha, see 412 U. S., at 513, that "nothing . . . suggest[s] that the generic word `person' in § 1983 was intended to have a bifurcated application to municipal corporations depending on the nature of the relief sought against them."

For the reasons stated above, the judgment of the Court of Appeals is

Reversed.

APPENDIX TO OPINION OF THE COURT

As proposed, the Sherman amendment was as follows:

"That if any house, tenement, cabin, shop, building, barn, or granary shall be unlawfully or feloniously demolished, pulled down, burned, or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together; or if any person shall unlawfully and with force and violence be whipped, scourged, wounded, or killed by any persons riotously and tumultuously assembled together; and if such offense was committed to deprive any person of any right conferred upon him by the Constitution and laws of the United States, or to deter him or punish him for exercising such right, or by reason of *his* race, color, or previous condition of servitude, in every such case the inhabitants of the county, city, or parish in which any of the said offenses shall be committed shall be liable to pay full compensation to the person or persons damnified by such offense if living, or to *his* widow or legal representative if dead; and such compensation may be recovered by such person or his representative by a suit in any court of the United States of competent jurisdiction in the district in which the offense was committed, to be in the name of the person injured, or his legal representative, and against said county, city, or parish. And execution may be issued on a judgment rendered in *such suit* and may be levied upon any property, real or personal, of any person in said county, city, or parish, and the said county, city, or parish may recover the full amount of such judgment, costs and interest,

from any person or persons engaged as principal or accessory in such riot in an action in any court of competent jurisdiction." Globe 663.

The complete text of the first conference substitute for the Sherman amendment is:

"That if any house, tenement, cabin, shop, building, barn, or granary shall be unlawfully or feloniously demolished, pulled down, burned, or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together; or if any person shall unlawfully and with force and violence be whipped, scourged, wounded, or killed by any persons riotously and tumultuously assembled together, with intent to deprive any person of any right conferred upon him by the Constitution and laws of the United States, or to deter him or punish him for exercising such right, or by reason of his race, color, or previous condition of servitude, in every such case the county, city, or parish in which any of the said offenses shall be committed shall be liable to pay full compensation to the person or persons damnified by such offense, if living, or to his widow or legal representative if dead; and such compensation may be recovered in an action on the case by such person or his representative in any court of the United States of competent jurisdiction in the district in which the offense was committed, such action to be in the name of the person injured, or his legal representative, and against said county, city, or parish, and in which action any of the parties committing such acts may be joined as defendants. And any payment of any judgment, or part thereof unsatisfied, recovered by the plaintiff in such action, may, if not satisfied by the individual defendant therein within two months next after the recovery of such judgment upon execution duly issued against such individual defendant in such judgment, and returned unsatisfied, in whole or in part, be enforced

against such county, city, or parish, by execution, attachment, mandamus, garnishment, or any other proceeding in aid of execution or applicable to the enforcement of judgments against municipal corporations; and such judgment shall be a lien as well upon all moneys in the treasury of such county, city, or parish, as upon the other property thereof. And the court in any such action may on motion cause additional parties to be made therein prior to issue joined, to the end that justice may be done. And the said county, city, or parish may recover the full amount of such judgment, by it paid, with costs and interest, from any person or persons engaged as principal or accessory in such riot, in an action in any court of competent jurisdiction. And such county, city, or parish, so paying, shall also be subrogated to all the plaintiff's rights under such judgment." *Id.*, at 749, 755.

The relevant text of the second conference substitute for the Sherman amendment is as follows:

"[A]ny person or persons having knowledge that any of the wrongs conspired to be done and mentioned in the second section of this act are about to be committed, and having power to prevent or aid in preventing the same, *shall neglect or refuse so to do,* and such wrongful act shall be committed, such person or persons shall be liable to the person injured, or his legal representatives." Id., at 804 (emphasis added).

MR. JUSTICE POWELL, concurring.

I join the opinion of the Court, and express these additional views.

Few cases in the history of the Court have been cited more frequently than *Monroe v. Pape,* 365 U. S. 167 (1961), decided less than two decades ago. Focusing new light on 42 U. S. C. § 1983, that decision widened access to the federal courts and permitted expansive interpretations of the reach of

the 1871 measure. But *Monroe* exempted local governments from liability at the same time it opened wide the courthouse door to suits against officers and employees of those entitieseven when they act pursuant to express authorization. The oddness of this result, and the weakness of the historical evidence relied on by the *Monroe* Court in support of it, are well demonstrated by the Court's opinion today. Yet the gravity of overruling a part of so important a decision prompts me to write.

I

In addressing a complaint alleging unconstitutional police conduct that probably was unauthorized and actionable under state law,[1] the *Monroe* Court treated the 42d Congress' rejection of the Sherman amendment as conclusive evidence of an intention to immunize local governments from all liability under the statute for constitutional injury. That reading, in light of today's thorough canvass of the legislative history, clearly "misapprehended the meaning of the controlling provision," *Monroe, supra,* at 192 (Harlan, J., concurring). In this case, involving formal, written policies of the Department of Social Services and the Board of Education of the city of New York that are alleged to conflict

[1] The gravamen of the complaint in *Monroe* was that Chicago police officers acting "under color of" state law had conducted a warrantless, early morning raid and ransacking of a private home. Although at least one of the allegations in the complaint could have been construed to charge a custom or usage of the Police Department of the city of Chicago that did not violate state law, see 365 U. S., at 258-259 (Frankfurter, J., dissenting in part), and there is a hint of such a theory in Brief for Petitioners, O. T. 1960, No. 39, pp. 41-42, that feature of the case was not highlighted in this Court. The dispute that divided the Court was over whether a complaint alleging police misconduct in violation of state law, for which state judicial remedies were available, stated a § 1983 claim in light of the statutory requirement that the conduct working injury be "under color of" state law. Compare 365 U. S., at 172-183 (opinion of the Court), and id., at 193-202 (Harlan, J., concurring), with id., at 202-259 (Frankfurter, J., dissenting in part).

with the command of the Due Process Clause, cf. *Cleveland Board of Education v. LaFleur*, 414 U. S. 632 (1974), the Court decides "not to reject [wisdom] merely because it comes late," *Henslee v. Union Planters Bank*, 335 U. S. 595, 600 (1949) (Frankfurter, J., dissenting).

As the Court demonstrates, the Sherman amendment presented an extreme example of "riot act" legislation that sought to impose vicarious liability on government subdivisions for the consequences of private lawlessness. As such, it implicated concerns that are of marginal pertinence to the operative principle of § 1 of the 1871 legislation-now § 1983-that "any person" acting "under color of" state law may be held liable for affirmative conduct that "subjects, or causes to be subjected, any person . . . to the deprivation of any" federal constitutional or statutory right. Of the many reasons for the defeat of the Sherman proposal, none supports *Monroe's* observation that the 42d Congress was fundamentally "antagonistic," 365 U. S., at 191, to the proposition that government entities and natural persons alike should be held accountable for the consequences of conduct directly working a constitutional violation. Opponents in the Senate appear to have been troubled primarily by the proposal's unprecedented lien provision, which would have exposed even property held for public purposes to the demands of § 1983 judgment lienors. *Ante, at* 673-674, n. 30. The opposition in the House of Representatives focused largely on the Sherman amendment's attempt to impose a peacekeeping obligation on municipalities when the Constitution itself imposed no such affirmative duty and when many municipalities were not even empowered under state law to maintain police forces. *Ante,* at 673-675, 679-682?

=If in the view of House opponents, such as Representatives Poland, Burchard, and Willard, see *ante,* at 679-680, a municipality obligated by state law to keep the peace could be held liable for a failure to provide equal protection against private violence, it seems improbable that they would have opposed imposition of liability on a municipality for the

The Court correctly rejects a view of the legislative history that would produce the anomalous result of immunizing local government units from monetary liability for action directly causing a constitutional deprivation, even though such actions may be fully consistent with, and thus not remediable under, state law. No conduct of government comes more clearly within the "under color of" state law language of § 1983. It is most unlikely that Congress intended public officials acting under the command or the specific authorization of the government employer to be *exclusively* liable for resulting constitutional injury.'

As elaborated in Part II of today's opinion, the rejection of the Sherman amendment can best be understood not as evidence of Congress' acceptance of a rule of absolute municipal immunity but as a limitation of the statutory ambit to actual wrongdoers, i. *e.*, a rejection of *respondeat superior* or any other principle of vicarious liability. Cf. Levin, The Section 1983 Municipal Immunity Doctrine, 65 Geo. L. J. 1483, 15311535 (1977). Thus, it has been clear that a public official may be held liable in damages when his actions are found to violate a constitutional right and there is no qualified immunity, see *Wood v. Strickland, 420* U. S. 308 (1975) ; *Procunier v. Navarette,* 434 U. S. 555 (1978). Today the Court recognizes

affirmative implementation of policies promulgated within its proper sphere of operation under state law. Such liability is premised not on a failure to take affirmative action in an area outside the contemplation of the state-law charter-the sort of liability that would have been imposed by the Sherman amendment-but on the consequences of activities actually undertaken within the scope of the powers conferred by state law.

' The view taken today is consistent with the understanding of the 42d Congress that unless the context revealed a more limited definition, "the word 'person' may extend and be applied to bodies politic and corporate . . . ." Act of Feb. 25, 1871, § 2, 16 Stat. 431. It also accords with the interpretation given the same word when it was used by Senator Sherman in the antitrust legislation of 1890 bearing his name. See *Lafayette v. Louisiana Power & Light Co.,* 435 U. S. 389 (1978) (plurality opinion); *Chattanooga Foundry v. Atlanta,* 203 U. S. 390, 396 (1906); of. *Pfizer Inc. v. Government o/ India,* 434 U. S. 308 (1978).

that this principle also applies to a local government when implementation of its official policies or established customs inflicts the constitutional injury.

II

This Court traditionally has been hesitant to overrule prior constructions of statutes or interpretations of common-law rules. *"Stare decisis is* usually the wise policy," *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting), but this cautionary principle must give way to countervailing considerations in appropriate circumstances.[4] I concur in the Court's view that this is not a case where we should "place on the shoulders of Congress the burden of the Court's own error." *Girouard v. United States*, 328 U. S. 61, 70 (1946).

Nor is this the usual case in which the Court is asked to overrule a precedent. Here considerations of *stare decisis* cut in both directions. On the one hand, we have a series of rulings that municipalities and counties are not "persons" for purposes of § 1983. On the other hand, many decisions of this Court have been premised on the amenability of school boards and similar entities to § 1983 suits.

In *Monroe* and its progeny, we have answered a question that was never actually briefed or argued in this Courtwhether a municipality is liable in damages for injuries that are the direct result of its official policies. "The theory of the complaint [in *Monroe* was] that under the circumstances [t]here alleged the City [was] liable for the acts of its police officers, by virtue of *respondeat superior.*" Brief for Petition-

[4] See, *e. g., Continental T. V., Inc. v. GTE Sylvania Inc.*, 433 U. S. 36 (1977); *Machinists v. Wisconsin Emp. Rel. Comm'n*, 427 U. S. 132 (1976); *Braden v. 30th Judicial Circuit Court of* Ky., 410 U. S. 484 (1973); *Griffin v. Breckenridge*, 403 U. S. 88 (1971); *Boys Markets, Inc. v. Retail Clerks*, 398 U. S. 235 (1970); *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 406-407, n. 1 (1932) (Brandeis, J., dissenting).

ers, O. *T. 1960, No. 39, p. 21.5* Respondents answered that adoption of petitioners' position would expose "Chicago and every other municipality in the United States . . . to :~ivil Rights Act liability through no action of its own and based on action contrary to its own ordinances and the laws of the state it is a part of." Brief for Respondents, O. T. 1960, No. *39,* p. 26. Thus the ground of decision in *Monroe* was not advanced by either party and was broader than necessary to resolve the contentions made in that case.'

The District Court in *Monroe* ruled in the municipality's favor, stating: "[S]ince the liability of the City of Chicago is based on the doctrine of *respondeat superior,* and since I have already held that the complaint fails to state a claim for relief against the agents of the city, there is no claim for relief against the city itself." Record, 0. T. 1960, No. 39, p. 30. The Court of Appeals affirmed for the same reason. 272 F. 2d 365-3666 (CA7 1959).

Petitioners in this Court also offered an alternative argument that the city of Chicago was a "person" for purposes of § 1983, Brief for Petitioners, 0. T. 1960, No. 39, p. 25, but the underlying theory of municipal liability remained one of *respondeat superior.*

The doctrine of *stare decisis* advances two important values of a rational system of law: (i) the certainty of legal principles and (ii) the wisdom of the conservative vision that existing rules should be presumed rational and not subject to modification "at any time a new thought seems appealing," dissenting opinion of *MR. JUSTICE* RsHNQUIST, post, at 718; cf. 0. Holmes, The Common Law 36 (1881). But, at the same time, the law has recognized the necessity of change, lest rules "simply persis[t] from blind imitation of the past." Holmes, The Path of the Law, 10 Harv. L. Rev. 457, 469 (1897). Any overruling of prior precedent, whether of a constitutional decision or otherwise, disserves to some extent the value of certainty. But I think we owe somewhat less deference to a decision that was rendered without benefit of a full airing of **all the relevant** considerations. That is the premise of the canon of interpretation that language in a decision not necessary to the holding may be accorded less weight in subsequent cases. I also would recognize. the fact that until this case the Court has not had to confront squarely the consequences of holding § 1983 inapplicable to official municipal policies.

Of course, the mere fact that an issue was not argued or briefed does not undermine the precedential force of a considered holding. *Marbury*

Similarly, in *Moor v. County of Alameda, 411 U. S. 693 (1973),* petitioners asserted that "the County v=as vicariously liable for the acts of its deputies and sheriff," *id.,* at *696,* under *42 U. S. C. § 1988. In* rejecting this vicarious-liability claim, *411 U. S.,* at *710,* and n. *27,* we reaffirmed *Monroe's* reading of the statute, but there was no challenge in that case to "the holding in *Monroe* concerning the status under § 1983 *of* public entities such as the County," *411 U.* S., at *700;* Brief for Petitioners, 0. T. *1972, No. 72-10, p. 9.*

Only in City *of Kenosha v. Bruno, 412 U. S. 507 (1973),* did the Court confront a § 1983 claim based on conduct that was both authorized under state law and the direct cause of the claimed constitutional injury. In *Kenosha,* however, we raised the issue of the city's amenability to suit under § 1983 on our own initiative.'

This line of cases-from *Monroe* to *Kenosha-is* difficult to reconcile on a principled basis with a parallel series of cases

v. Madison, 1 Cranch 137 (1803), cited by the dissent, *post, at* 718, is a case in point. But the Court's recognition of its power to invalidate legislation not in conformity with constitutional command was essential to its judgment in *Marbury.* And on numerous subsequent occasions, the Court has been required to apply the full breadth of the *Marbury* holding. In *Monroe,* on the other hand, the Court's rationale was broader than necessary to meet the contentions of the parties and to decide the case in a principled manner. The language in *Monroe* cannot be dismissed as dicta, but we may take account of the fact that the Court simply was not confronted with the implications of holding § 1983 inapplicable to official municipal policies. It is an appreciation of those implications that has prompted today's re-examination of the legislative history of the 1871 measure.

7In *Aldinger v. Howard,* 427 U. S. 1, 16 (1976), we reaffirmed *Monroe,* but petitioner did not contest the proposition that counties were excluded from the reaoli of § 1983 under *Monroe,* and the question before us concerned the scope of pendent-party jurisdiction with respect to a state-law claim. Similarly, the parties in *Mt. Healthy City Board of Bd. v. Doyle,* 429 U. S. 274 (1977), did not seek a re-examination of our ruling *in Monroe.*

in which the Court has assumed sub *silentio* that some local government entities could be sued under § 1983. If now, after full consideration of the question, we continued to adhere to *Monroe*, grave doubt would be cast upon the Court's exercise of § 1983 jurisdiction over school boards. See *ante*, at 663 n. 5. Since "the principle of blanket immunity established in *Monroe* cannot be cabined short of school boards," *ante*, at 696, the conflict is squarely presented. Although there was an independent basis of jurisdiction in many of the school board cases because of the inclusion of individual public officials as nominal parties, the opinions of this Court make explicit reference to the school board party, particularly in discussions of the relief to be awarded, see, *e. g.*, *Green v. County School Board*, 391 U. S. 430, 437-439, 441-442 (1968) ; Milliken *v. Bradley*. 433 U. S. 267, 292-293 (1977) (POWELL, J., concurring in judgment). And, as the Court points out, *ante*, at 696-697, and nn. 62, 63, Congress has focused specifically on this Court's school board decisions in several statutes. Thus the exercise of § 1983 jurisdiction over school boards, while perhaps not premised on considered holdings, has been longstanding. Indeed, it predated *Monroe*.

Even if one attempts to explain away the school board decisions as involving suits which "may be maintained against board members in their official capacities for injunctive relief under either § 1983 or Ex *parte Young*, 209 U. S. 123 (1908)," *roost*, at 716-717, n. 2, some difficulty remains in rationalizing the relevant body of precedents. At least two of the school board cases involved claims for monetary relief. *Cohen v. Chesterfield County School Board*, 326 F. Supp.1159,1161(ED Va. 1971), rev'd, 474 F. 2d 395 (CA4 1973), rev'd and remanded, 414 U. S. 632 (1974) ; Tinker *v. Des Moines Independent School Dist.*, 393 U. S. 503, 504 (1969). See also *Vlandis v. Kline*, 412 U. S. 441, 445 (1973). Although the point was not squarely presented in this Court, these claims

for damages could not have been maintained in official-capacity suits if the government entity were not itself suable. Cf. *Edelman v. Jordan, 415 U. S.* 651 (1974) S Moreover, the rationale of *Kenosha* would have to be disturbed to avoid closing all avenues under § 1983 to injunctive relief against constitutional violations by local government. The Court of Appeals in this case suggested that we import, by analogy, the Eleventh Amendment fiction of *Ex parte Young* into § 1983, 532 F. 2d 259, 264-266 (CA2 1976). That approach, however, would create tension with *Kenosha* because it would require "a bifurcated application" of "the generic word `person' in § 1983" to public officials "depending on the nature of the relief sought against them." 412 U. S., at 513. A public official sued in his official capacity for carrying out official policy would be a "person" for purposes of injunctive relief, but a non-"person" in an action for damages. The Court's holding avoids this difficulty. See *ante,* at 690 n. 55.

Finally, if we continued to adhere to a rule of absolute municipal immunity under § 1983, we could not long avoid the question whether "we should, by analogy to our decision in *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 U. S. 388 (1971), imply a cause of action directly from the Fourteenth Amendment which would not be subject to the limitations contained in § 1983 . . . ." Mt. *Healthy City Board of Ed. v. Doyle,* 429 U. S. 274, 278 (1977). One aspect of that *inquiry* would be whether there are any "special factors *counselling* hesitation in the absence of affirmative action by Congress," *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 U. S. 388, 396 (1971), such as an "explicit congressional declaration

$ To the extent that the complaints in those cases asserted claims against the individual defendants in their personal capacity, as well as official capacity, the court would have had authority to award the relief requested. There is no suggestion in the opinions, however, that the practices at issue were anything other than official, duly authorized policies.

that persons injured by a [municipality] may not recover money damages . . . , but must instead be remitted to another remedy, equally effective in the view of Congress," id., at 397. In light of the Court's persuasive re-examination in today's decision of the 1871 debates, I would have difficulty inferring from § 1983 "an explicit congressional declaration" against municipal liability for the implementation of official policies in violation of the Constitution. Rather than constitutionalize a cause of action against local government that Congress intended to create in 1871, the better course is to confess error and set the record straight, as the Court does today.[*]

III

Difficult questions nevertheless remain for another day. There are substantial line-drawing problems in determining "when execution of a government's policy or custom" can be said to inflict constitutional injury such that "government as an entity is responsible under § 1983." *Ante*, at 694. This case, however, involves formal, written policies of a municipal department and school board; it is the clear case. The Court also reserves decision on the availability of a qualified municipal immunity. *Ante*, at 701. Initial resolution of the question whether the protection available at common law for municipal corporations, see *post*, at 720-721, or other principles support a

[*] *MR. JUSTICE REHNQUIST's* dissent makes a strong argument that "[s]ince *Monroe*, municipalities *have* had the right to expect that they would not be held liable retroactively for their officers' failure to predict this Court's recognition of new constitutional rights." Post, at 717. But it reasonably may be assumed that most municipalities already indemnify officials sued for conduct within the scope of their authority, a policy that furthers the important interest of attracting and retaining competent officers, board members, and employees. In any event, the possibility of a qualified immunity, as to which the Court reserves decision, may remove some of the harshness of liability for good-faith failure to predict the often uncertain course of constitutional adjudication.

qualified municipal immunity in the context of the § 1983 damages action, is left to the lower federal courts.

MR. JUSTICE STEVDNS, concurring in part.

Since Parts II and IV of the opinion of the Court are merely advisory and are not necessary to explain the Court's decision, I join only Parts I, III, and V.

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, dissenting.

Seventeen years ago, in *Monroe v. Pape,* 365 U. S. 167 (1961), this Court held that the 42d Congress did not intend to subject a municipal corporation to liability as a "person" within the meaning of 42 U. S. C. § 1983. Since then, the Congress has remained silent, but this Court has reaffirmed that holding on at least three separate occasions. *Aldinger v. Howard,* 427 U. S. 1 (1976) ; City *o f Kenosha v. Bruno,* 412 U. S. 507 (1973) ; *Moor v. County of Alameda,* 411 U. S. 693 (1973). See also lilt. *Healthy City Board of Ed. v. Doyle,* 429 U. S. 274, 277-279 (1977) . Today, the Court abandons this long and consistent line of precedents, offering in justification only an elaborate canvass of the same legislative history which was before the Court in 1961. Because I cannot agree that this Court is "free to disregard these precedents," which have been "considered maturely and recently" by this Court, *Runyon v. McCrary,* 427 U. S. 160, 186 (1976) (POWELL, J., concurring), I am compelled to dissent.

I

As this Court has repeatedly recognized, *id.,* at 175 n. 12; *Edelman v. Jordan,* 415 U. S. 651, 671 n. 14 (1974), considerations of *stare decisis* are at their strongest when this Court confronts its previous constructions of legislation. In all cases, private parties shape their conduct according to this Court's settled construction of the law, but the Congress is at

liberty to correct our mistakes of statutory construction, unlike our constitutional interpretations, whenever it sees fit. The controlling principles were best stated by Mr. Justice Brandeis:

> *"Stare decisis is* usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right . . . . This is commonly true even where the error is a matter of serious concern, provided correction can be had by legislation. But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions." *Burnet v. Coronado Oil & Gas Co., 285 U. S. 393, 406407 (1932)* (dissenting opinion) (footnotes omitted).

Only the most compelling circumstances can justify this Court's abandonment of such firmly established statutory precedents. The best exposition of the proper burden of persuasion was delivered by Mr. Justice Harlan in *Monroe* itself

> "From my point of view, the policy of *stare decisis, as* it should be applied in matters of statutory construction, and, to a lesser extent, the indications of congressional acceptance of this Court's earlier interpretation, require that it appear *beyond doubt* from the legislative history of the 1871 statute that *[United States v.] Classic, [313 U. S. 299 (1941)]* and Screws [v. *United States, 325 U. S. 91 (1945)] misapprehended* the meaning of the controlling provision, before a departure from what was decided in those cases would be justified." *365 U. S.*, at *192* (concurring opinion) (footnote omitted; emphasis added).

The Court does not demonstrate that any exception to this general rule is properly applicable here. The Court's first assertion, that *Monroe* "was a departure from prior practice," *ante*, at *695, is* patently erroneous. Neither in *Douglas v. City of Teannette, 319 U. S. 157 (1943)*, nor in *Holmes v. Atlanta,*

350 U. S. 879 (1955), nor in any of the school board cases cited by the Court, *ante*, at 663 n. 5, was the question now before us raised by any of the litigants or addressed by this Court. As recently as four Terms ago, we said in *Hagan& v. Lavine*, 415 U. S. 528, 535 n. 5 (1974)

> "Moreover, when questions of jurisdiction have been passed on in prior decisions sub *silentio*, this Court has never considered itself bound when a subsequent case finally brings the jurisdictional issue before us."

The source of this doctrine that jurisdictional issues decided sub *silentio* are not binding in other cases seems to be Mr. Chief Justice Marshall's remark in *United States v. More*, 3 Cranch 159, 172 (1805).1 While the Chief Justice also said that such decisions may "have much weight, as they show that this point neither occurred to the bar or the bench," *Bank of the United States v. Deveaux*, 5 Cranch 61, 88 (1809), unconsidered assumptions of jurisdiction simply cannot outweigh four consistent decisions of this Court, explicitly considering and rejecting that jurisdiction.

Nor is there any indication that any later Congress has ever approved suit against any municipal corporation under § 1983. Of all its recent enactments, only the Civil Rights Attorney's Fees Awards Act of 1976, § 2, 90 Stat. 2641, 42 U. S. C. § 1988 (1976 ed.), explicitly deals with the Civil Rights Act of 1871.= The 1976 Act provides that attorney's fees may be awarded

1 As we pointed out in *Mt. Healthy City Board of Ed. v. Doyle*, 429 U. S. 274, 278-279 (1977), the existence of a claim for relief under § 1983 is "jurisdictional" for purposes of invoking 28 U. S. C. § 1343, even though the existence of a meritorious constitutional claim is not similarly required in order to invoke jurisdiction under 28 U. S. C. § 1331. See *Bell v. Hood*, 327 U. S. 678, 682 (1946).

2 The other statutes cited by the Court, *ante*, at 697-699, n. 63, make no mention of § 1983, but refer generally to suits against "a local educational agency." As noted by the Court of Appeals, 532 F. 2d 259, 264-266, such suits may be maintained against board members in their official capacities

to the prevailing party "[i]n any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title." There is plainly no language in the 1976 Act which would enlarge the parties suable under those substantive sections; it simply provides that parties who are already suable may be made liable for attorney's fees. As the Court admits, *ante,* at 699, the language in the Senate Report stating that liability may be imposed "whether or not the agency or government is a named party," S. Rep. No. 941011, p. 5 (1976), suggests that Congress did not view its purpose as being in any way inconsistent with the well-known holding of *Monroe.*

The Court's assertion that municipalities have no right to act "on an assumption that they can violate constitutional rights indefinitely," *ante,* at 700, is simply beside the point. Since *Monroe,* municipalities *have* had the right to expect that they would not be held liable retroactively for their officers' failure to predict this Court's recognition of new constitutional rights. No doubt innumerable municipal insurance policies and indemnity ordinances have been founded on this assumption, which is wholly justifiable under established principles of *stare decisis. To* obliterate ,those legitimate expectations without more compelling justifications than those advanced by the Court is a significant departure from our prior practice.

I cannot agree with MR. JUSTICE POWELL's view that "[w]e owe somewhat less deference to a decision that was rendered without benefit of a full airing of all the relevant considerar tions." *Ante,* at 709 n. 6. Private parties must be able to rely upon explicitly stated holdings of this Court without being

for injunctive relief under either § 1983 or Ex parte Young, 209 U. S. 123 (1908). Congress did not stop to consider the technically proper avenue of relief, but merely responded to the fact that relief was being granted. The practical result of choosing the avenue suggested by petitioners would be the subjection of school corporations to liability in damages. Nothing in recent congressional history even remotely supports such a result.

obliged to peruse the briefs of the litigants to predict the likelihood that this Court might change its mind. To cast such doubt upon each of our cases, from *Marbury v. Madison, 1* Cranch 137 (1803), forward, in which the explicit ground of decision "was never actually briefed or argued," *ante,* at 708 (POWELL, J., concurring), would introduce intolerable uncertainty into the law. Indeed, in *Marbury* itself, the argument of Charles Lee on behalf of the applicants-which, unlike the arguments in *Monroe, is* reproduced in the Reports of this Court where anyone can see it-devotes not a word to the question of whether this Court has the power to invalidate a statute duly enacted by the Congress. Neither this ground of decision nor any other was advanced by Secretary of State Madison, who evidently made no appearance. 1 Cranch, at 153-154. More recent landmark decisions of this Court would appear to be likewise vulnerable under my Brother POWELL's analysis. In *Mapp v. Ohio,* 367 U. S. 643 (1961), none of the parties requested the Court to overrule Wolf v. *Colorado,* 338 U. S. 25 (1949) ; it did so only at the request of *an amicus curiae.* 367 U. S., at 646 n. 3. That *Marbury, Mapp,* and countless other decisions retain their vitality despite their obvious flaws is a necessary byproduct of the adversary system, in which both judges and the general public rely upon litigants to present "all the relevant considerations." *Ante,* at 709 n. 6 (POWELL, J., concurring). While it undoubtedly has more latitude in the field of constitutional interpretation, this Court is surely not free to abandon settled statutory interpretation at any time a new thought seems appealing.3

Thus, our only task is to discern the intent of the 42d Congress. That intent was first expounded in *Monroe,* and it

3I find it somewhat ironic that, in abandoning the supposedly illconsidered holding of *Monroe, my* Brother POWELL relies heavily upon cases involving school boards, although he admits that "the exercise of § 1983 jurisdiction . . . [was] perhaps not premised on considered holdings." *Ante,* at 711.

has been followed consistently ever since. This is not some esoteric branch of the law in which congressional silence might reasonably be equated with congressional indifference. Indeed, this very year, the Senate has been holding hearings on a bill, S. 35, 95th Cong., 1st Sess. (1977), which would remove the municipal immunity recognized by *Monroe. 124* Cong. Rec. D117 (daily ed. Feb. 8, 1978). In these circumstances, it cannot be disputed that established principles of *stare decisis* require this Court to pay the highest degree of deference to its prior holdings. *Monroe* may not be overruled unless it has been demonstrated "beyond doubt from the legislative history of the 1871 statute that *[Monroe]* misapprehended the meaning of the controlling provision." *Monroe,* 365 U. S., at 192 (Harlan, J., concurring). The Court must show not only that Congress, in rejecting the Sherman amendment, concluded that municipal liability was not unconstitutional, but also that, in enacting § 1, it intended to impose that liability. I am satisfied that no such showing has been made.

II

Any analysis of the meaning of the word "person" in § 1983, which was originally enacted as § 1 of the Ku Klux Klan Act of April 20, 1871, 17 Stat. 13, must begin, not with the Sherman amendment, but with the Dictionary Act. The latter Act, which supplied rules of construction for all legislation, provided:

> "That in all acts hereafter passed . . . the word `person' may extend and be applied to bodies politic and corporate . . . unless the context shows that such words were intended to be used in a more limited sense . . . ." Act of Feb. 25, 1871, § 2, *16* Stat. 431.

The Act expressly provided that corporations need not be included within the scope of the word "person" where the context suggests a more limited .reach. Not a word in the legislative history of the Act gives any indication of the contexts

in which Congress felt it appropriate to include a corporation as a person. Indeed, the chief cause of concern was that the Act's provision that "words importing the masculine gender may be applied to females," might lead to an inadvertent extension of the suffrage to women. Cong. Globe, 41st Cong., 3d Sess., 777 (1871) (remarks of Sen. Sawyer).

There are other factors, however, which suggest that the Congress which enacted § 1983 may well have intended the word "person" "to be used in a more limited sense," as *Monroe* concluded. It is true that this Court had held that both commercial corporations, *Louisville R. Co. v. Letson,* 2 How. 497, 558 (1844), and municipal corporations, *Cowles v. Mercer County,* 7 Wall. 118, 121 (1869), were "citizens" of a State within the meaning of the jurisdictional provisions of Art. III. Congress, however, also knew that this label did not apply in all contexts, since this Court, in *Paul v. Virginia,* 8 Wall. 168 (1869), had held commercial corporations not to be "citizens" within the meaning of the Privileges and Immunities Clause, U. S. Const., Art. IV, § 2. Thus, the Congress surely knew that, for constitutional purposes, corporations generally enjoyed a different status in different contexts. Indeed, it may be presumed that Congress intended that a corporation should enjoy the same status under the Ku Klux Klan Act as it did under the Fourteenth Amendment, since it had been assured that § 1 "was so very simple and really reenact[ed] the Constitution." Cong. Globe, 42d Cong., 1st Sess., 569 (1871) (remarks of Sen. Edmunds). At the time § 1983 was enacted the only federal case to consider the status of corporations under the Fourteenth Amendment had concluded, with impeccable logic, that a corporation was neither a "citizen" nor a "person." *Insurance Co. v. New Orleans,* 13 F. Cas. 67 (No. 7,052) (CC La. 1870).

Furthermore, the state courts did not speak with a single voice with regard to the tort liability of municipal corporations. Although many Members of Congress represented

States which had retained absolute municipal tort immunity, see, e. g., *Irvine v. Town of Greenwood*, 89 S. C. 511, 72 S. E. 228 (1911) (collecting earlier cases), other States had adopted the currently predominant distinction imposing liability for proprietary acts, see generally 2 F. Harper & F. James, Law of Torts § 29.6 (1956), as early as 1842, *Bailey v. Mayor o f City o f New York*, 3 Hill 531 (N. Y. 1842) . Nevertheless, no state court had ever held that municipal corporations were always liable in tort in precisely the same manner as other persons.

The general remarks from the floor on the liberal purposes of § 1 offer no explicit guidance as to the parties against whom the remedy could be enforced. As the Court concedes, only Representative Bingham raised a concern which could be satisfied only by relief against governmental bodies. Yet he never directly related this concern to § 1 of the Act. Indeed, Bingham stated at the outset, "I do not propose now to discuss the provisions of the bill in detail," Cong. Globe, 42d Cong., 1st Sess., App. 82 (1871), and, true to his word, he launched into an extended discourse on the beneficent purposes of the Fourteenth Amendment. While Bingham clearly stated that Congress could "provide that no citizen in any State shall be deprived of his property by State law or the judgment of a State court without just compensation therefor," id., at 85, he never suggested that such a power was exercised in § 1 1

' It has not been generally thought, before today, that § 1983 provided an avenue of relief from unconstitutional takings. Those federal courts which have granted compensation against state and local governments have resorted to an implied right of action under the Fifth and Fourteenth Amendments. *Richmond Elks Hall Assn. v. Richmond Redevelopment Agency*, 561 F. 2d 1327 (CA9 1977), aff'g 389 F. Supp. 486 (ND Cal. 1975); *Foster v. Detroit*, 405 F. 2d 138, 140 (CA6 1968). Since the Court today abandons the holding of *Monroe* chiefly on the strength of Bingham's arguments, it is indeed anomalous that § 1983 will provide relief only when a local government, not the State itself, seizes private property. See *ante*, at 690 n. 54; *Fitzpatrick v. Bitzer*, 427 U. S. 445, 452 (1976) ; *Edelman v. Jordan*, 415 U. S. 651, 674-677 (1974).

Finally, while Bingham has often been advanced as the chief expositor of the Fourteenth Amendment, *Duncan v. Louisiana,* 391 U. S. 145, 165 (1968) (Black, J., concurring); *Adamson v. California,* 332 U. S. **46, 73-74 (1947) (Black, J., dissenting),** there is nothing to indicate that his colleagues placed any greater credence in his theories than has this Court. See *Duncan, supra,* at 174--176 (Harlan, J., dissenting); *Adamson, supra,* at 64 (Frankfurter, J., concurring).

Thus, it ought not lightly to be presumed, as the Court does today, *ante,* at 690 n. 53, that § 1983 "should prima facie be construed to include `bodies politic' among the entities that could be sued." Neither the Dictionary Act, the ambivalent state of judicial decisions, nor the floor debate on § 1 of the Act gives any indication that any Member of Congress had any inkling that § 1 could be used to impose liability on municipalities. Although Senator Thurman, as the Court emphasizes, *ante,* at 686 n. 45, expressed his belief that the terms of § 1 "are as comprehensive as can be used," Cong. Globe, 42d Cong., 1st Sess., App. 217 (1871), an examination of his lengthy remarks demonstrates that it never occurred to him that § 1 did impose or could have imposed any liability upon municipal corporations. In an extended parade of horribles, this "old Roman," who was one of the Act's most implacable opponents, suggested that state legislatures, Members of Congress, and state judges might be held liable under the Act. *Ibid. If,* at that point in the debate, he had any idea that § 1 was designed to impose tort liability upon cities and counties, he would surely have raised an additional outraged objection. Only once was that possibility placed squarely before the Congress-in its consideration of the Sherman amendment-and the Congress squarely rejected it.

The Court is probably correct that the rejection of the Sherman amendment does not lead ineluctably to the conclusion that Congress intended municipalities to be immune from liability under all circumstances. Nevertheless, it cannot be

denied that the debate on that amendment, the only explicit consideration of municipal tort liability, sheds considerable light on the Congress' understanding of the status of municipal corporations in that context. Opponents of the amendment were well aware that municipalities had been subjected to the jurisdiction of the federal courts in the context of suits to enforce their contracts, Cong. Globe, 42d Cong., 1st Sess., 789 (1871) (remarks of Rep. Kerr), but they expressed their skepticism that such jurisdiction should be exercised in cases sounding in tort:

> "Suppose a judgment obtained under this section, and no property can be found to levy upon except the courthouse, can we levy on the court-house and sell it? So this section provides, and that too in an action of tort, in an action *ex delicto,* where the county has never entered into any contract, where the State has never authorized the county to assume any liability of the sort or imposed any liability upon it. It is in my opinion simply absurd." Id., at 799 (remarks of Rep. Farnsworth).

Whatever the merits of the constitutional arguments raised against it, the fact remains that Congress rejected the concept of municipal tort liability on the only occasion in which the question was explicitly presented. Admittedly this fact is not conclusive as to whether Congress intended § 1 to embrace a municipal corporation within the meaning of "person," and thus the reasoning of *Monroe* on this point is subject to challenge. The meaning of § 1 of the Act of 1871 has been subjected in this case to a more searching and careful analysis than it was in *Monroe,* and it may well be that on the basis of this closer analysis of the legislative debates a conclusion contrary to the *Monroe* holding could have been reached when that case was decided 17 years ago. But the rejection of the Sherman amendment remains instructive in that here alone did the legislative debates squarely focus on the liability of municipal corporations, and that liability was rejected.

Any inference which might be drawn from the Dictionary Act or from general expressions of benevolence in the debate on § 1 that the word "person" was intended to include municipal corporations falls far short of showing "beyond doubt" that this Court in *Monroe* "misapprehended the meaning of the controlling provision." Errors such as the Court may have fallen into in *Monroe* do not end the inquiry as to *stare decisis;* they merely begin it. I would adhere to the holding of *Monroe* as to the liability of a municipal corporation under § 1983.

III

The decision in *Monroe v. Pape was* the fountainhead of the torrent of civil rights litigation of the last 17 years. Using § 1983 as a vehicle, the courts have articulated new and previously unforeseeable interpretations of the Fourteenth Amendment. At the same time, the doctrine of municipal immunity enunciated in *Monroe* has protected municipalities and their limited treasuries from the consequences of their officials' failure to predict the course of this Court's constitutional jurisprudence. None of the Members of this Court can foresee the practical consequences of today's removal of that protection. Only the Congress, which has the benefit of the advice of every segment of this diverse Nation, is equipped to consider the results of such a drastic change in the law. It seems all but inevitable that it will find it necessary to do so after today's decision.

I would affirm the judgment of the Court of Appeals.

The following opinion was taken from United States District Court, E. D. Pennsylvania No 73-808, *Tauss v. Rizzo* 361 F Sup1198 (1971)

MEMORANDUM

JOSEPH S. LORD, III, Chief Judge.

This civil rights action was originally started against defendant Rizzo and Philadelphia police officers Turner, Curtiss and Fulwood under 42 U.S.C. section 1983 . On May 11, 1973, the Assistant City Solicitor filed a motion to dismiss on behalf of defendant Rizzo and the City of Philadelphia, although the latter had not been named as a defendant in the caption. On June 1, 1973, we granted plaintiffs' motion for leave to file an amended complaint, adding the City as a named defendant and permitting the assertion of the additional jurisdictional grounds of Fourteenth Amendment violations and a violation of 42 U.S.C. section 1985. Defendants did not re-file their motion to dismiss, resting instead on their original motion.

The amended complaint alleges that on April 10, 1971, at a campaign rally of defendant Rizzo, the plaintiffs sought admission to campaign headquarters to protest the illegal policies of Rizzo during his tenure as police commissioner, when they were brutally set upon by Turner,Curtis and Fulwood. The complaint alleges that the last three named defendants were acting pursuant to the orders of defendant Rizzo and that all defendants conspired to deprive plaintiffs of their federally protected rights. The complaint further alleges that the assault on plaintiffs was totally unprovoked; that the plaintiffs were arrested and charged with numerous crimes; and that the plaintiffs were later acquitted of all charges.

The defendant City first complains that it was improper to allow it to be named in the caption by amendment for the reason that, the acts having occurred on April 10, 1971, the applicable statute of limitations bared any suit against it. R.R.Civ.P. 15(c) as amended in 1966 provides a short and plain answer to this contention. That rule as amended provides:

"(c) Relation Back of Amendments, Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him."

[1] There can be no doubt that the claim arose out of the conduct set forth in the original complaint. There is equally no doubt that the City received notice of the institution of the action and that the City knew or should have known that except for inadvertence the action would have been brought against it. The original complaint refers to the City in paragraph 9 under the heading "defendant" as a body politic and the employer of all defendants except defendant Rizzo. That the City itself treated the failure to name it specifically in the caption as an oversight is demonstrated by the fact that its motion to dismiss, filed before the amendment of the complaint, was filed on behalf of the City. The City as properly added as a defendant.

[2-4] Defendants Rizzo and City argue further that the additional jurisdictional grounds of the Fourteenth Amendment and 42 U.S.C. section 1985 should not be permitted on the grounds that they state a new cause of action after the running of the statute. In this position the defendants are mistaken. A change of legal theory does not create a new cause of action. If the factual situation upon which relief is sought is unchanged, an amendment may be allowed which states an entirely new claim for relief arising out of the same transaction. 1A Barron and Holtzoff, Federal Practice and Procedure 704 (Wright Ed.) 1960. Indeed there is no requirement that the jurisdictional statute be specifically pleaded if the facts giving the courts jurisdiction are adequately set forth in the complaint. Williams v. United States, 405 F.2d 951 (C.A. 1969).

Defendant Rizzo argues that because the complaint alleges that he is sued in his capacity as a private citizen and because of the absence of any allegation that he took part in the alleged assault or that the alleged assault took place in his presence, the action should be dismissed as to him. The argument over looks the fact that the amended complaint alleges in paragraph 14 that all defendants conspired to deprive plaintiff of their federally protected rights. In Adickes v. Kress & Co., 398 U.S., 144, 90 S.Ct., 1598, 26 L.Ed.2d 142 (1970), plaintiff brought an action under 42 U.S.C. section 1983 alleging a conspiracy between the defendant Kress and the police department. The Court said 398 U.S. at page 152, 90 S.Ct. at page 1605:

"* * * Although this is a lawsuit against a private party, not the State or one of its officials, our cases made clear that petitioner will have made out a violation of our Fourteenth Amendment rights and will be entitled to relief under section 1983 if she can prove that a Kress employee, in the course of employment, and a Hattiesburg policeman somehow reached an understanding to deny Miss Adickes service in Kress store. * * *

"The involvement of a state official in such a conspiracy plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights, whether or not the actions of the police were officially authorized or lawful; * * * Moreover, a private party involved in such a conspiracy, even though not an official of the State, can be liable under section 1983. 'Private persons, jointly engaged with state officials in the prohibited action are acting "under color" of law for purposes of the statute * * * It is enough that he is a willful participating in joint activity with the State or its agents.

[5] A complaint is sufficient if the plaintiff is entitled to relief under any legal theory." Thompson v. All State Insurance Co., 476 F.2d 746, 749 (C.A. 5, 1973). It is clear that if the plaintiffs proved that defendant Rizzo conspired with the police officials to violate the plaintiffs' civil rights there would be sufficient color of law to permit recovery by the plaintiffs against Rizzo.

[6,7] Finally; the defendant City argues that it is not a person within the meaning of the Civil Rights Act. We agree, this conclusion does not foreclose an action against the city on principles of common law based upon the doctrine of respndeat superior. Since the basis of the action arose out of the same operative facts as does the federal cause of action against the defendant Rizzo and the police officials, we have the power to determine it under of pendent jurisdiction. *United Mine Workers v. Gibbs,* 383 U.S.715 86 S Ct. 1130 16 Led 2d 218 (1966). The city recognizes this power but urges us not to exercise our discretion to invoke pendent jurisdiction and that our discretion should lead us to decline the assumption of jurisdiction. *Moor v. County of Alameda* 411 U. S.693, 93 S.Ct. 1785 36Led 2d 596. In that case the refusal of the District Court to exercise pendent jurisdiction over a state claim against the county was affirmed by the Court of Appeals and the Supreme Court. However, the Court of Appeals for the Ninth Circuit is specifically not in accord with the decisions of this Circuit in which the exercise of pendent jurisdiction over non-federal claims has been approved. Jacobson and the Circuits which had reached a contrary result. The Court did find that in *MCable* Co., 364 F.2d 558 (C.A. 3, 1966). In reaching their conclusion the District Court and the Court of Appeals in Moor considered themselves bound by the Ninth Circuit's previous decision in Hymer v. Chai, 407 F.2d 136 (C.A. 9, 1969). The Supreme Court said 411 U.S. at page 713, 93 S.Ct. at page 1798: " * * * Hymer stands virtually alone against this post-*Gibbs* and the expansion of the concept of pendent jurisdiction beyond the narrow limits set by Hurn v. Oursler, *supra* [289 U.S. 238, 53 S.Ct. 586 77 L.Ed. 1148], * * *"

The Court did not specifically decide the conflict between *Hymer* And the Circuits which had reached a contrary result. The Court did find that in *Moor* the exercise of jurisdiction over the state law claims was inappropriate for two reasons:

"* * * First, the District Court pointed out that it would be called upon to resolve difficult questions of California law upon which state court decisions are not legion.' In addition, the court felt that 'with the introduction of a claim against the County under the California Tort Claims Act, with the special defense available to the County, the case' which will be tried to a jury, 'could become unduly complicated.' As is evident from this Court's decision in *Gibbs*, 383 U.S. at 726-727, 86 S.Ct. at 1138-1139, the unsettled nature of state law and the likelihood of jury confusion were entirely appropriate factors for the District Court to consider * * *"

These factors do not obtain in this case. Pennsylvania has recently obliterated the doctrine of sovereign immunity. Ayala v. Board of Education, Philadelphia, Pa., 305 A.2d 877, 1973. There are therefore no difficult questions of state law to resolve nor would there by any reasonable possibility of confusion. The now permissible claim against the City is based upon the simple application of the principles of *respondeat superior* which would present no difficulties to a fact finder. The factors of judicial economy and the avoidance of a multiplicity of suits dictate that these claims should be tried in a single lawsuit. We therefore reject the argument of the City that we should refrain from the exercise of our pendent jurisdiction.

For all of the foregoing reasons, the motions of the defendant Rizzo and the City of Philadelphia to dismiss the complaint will be denied.

The following opinion was taken from United States Supreme Court , *United States v. Price,* 383 U.S. 794, 795 (1966)

Mr. Justice Fortas delivered the opinion of the Court.

These are direct appeals from the dismissal in part of two indictments returned by the United States Grand Jury for the Southern District of Mississippi. The indictments allege assault by the accused persons upon the rights of the asserted victims to due process of law under th Fourteenth Amendment. The indictment in No.59 charges 18 persons [1] with violations of 18 U. S. C. Section 241 (1964 ed.). In No. 60, the same 18 persons are charged with offenses based upon 18 U.S.C. section 242 (1964 ed.). These are among the so-called civil rights statutes which have come to us from Reconstruction days, the period in our history which also produced the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution.

The sole question presented in these appeals is whether the specified statutes make criminal the conduct for which the individual were indicted. It is an issue of construction, not of constitutional power. We have no doubt of "the power of Congress to enforce by appropriate criminal sanction every right guaranteed by the Due Process Clause of the Fourteenth Amendment." *United States v. Williams,* 341 U.S. 70, 72 [2]

1. One of the defendants charged in the two indictments James E. Jordan, is not a party to the present appeal. His case was transferred under Rule 20, Fed. Rules Crim. Proc., to the United States District Court for the Middle District of Georgia.

2 Cf. Mr. Justice Holmes in *United States v. Mosley,* 233 U.S 383, 386, (a federal voting rights case under an earlier version of section 241): "It is not open to question that this statute is constitutional . . . ." The source of congressional power in this case is of course section 5 of the Fourteenth Amendment which reads "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

There are three "Williams: case arising from the same events. The first, with no bearing on the present appeal is *United States v. Williams,* 341 U.S. 58, involving a prosecution for perjury. The second *United States v. Williams,* 341 U.S. 70, was a prosecution for violation of section 241; it will be referred to hereinafter as Williams I. The third,*Williams v. United States,* 341 U.S. 97, was a prosecution for violation section 242; it will be referred to as Williams II

These are federal and not state indictments. They do not charge as crimes the alleged assaults or murders. The indictments are framed to fit the stated federal statutes, and the question before us is whether the indictments charge offenses against the various defendants which may be prosecuted under the designated federal statutes.

We shall deal first with the indictment in NO. 60, based on section 242 of the Criminal Code, and then with the indictment in NO. 59, under section 241. We do this for ease of exposition and because section 242 was enacted by the Congress about four years prior to section 241.[3] Section 242 was enacted in 1866; section in 1870.

I. No. 60.

Section 242 defines a misdemeanor, punishable by fine of not more than $1,000 or imprisonment for not more than one year, or both. So far as here significant, it provides punishment for "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . ."

The indictment in No. 60 contains four counts, each of which names as defendants the three officials and 15 nonofficial persons. The First Count charges, on the basis of allegations substantially as set forth above, that all of the defendants conspired "to willfully Subject" Schwerner, Chaney and Goodman: to the deprivation Of their right, privilege and immunity secured and protected by the Fourteenth Amendment to the Constitution of the United States not To be summarily punished without due process of law by persons acting under color of the laws by persons acting under color of the Laws of the State of Mississippi" This is said to constitute a

3. In the interest of clarity , we shall use the present designation of the statutes throughout the discussion. Reference is made to the Appendix to Mr. Justice Frankfurter's opinion in Williams I, 341 U.S.., at 83, which contains a table showing major changes in the statutes through the years.

conspiracy to violate section 242 and therefore an offense under 18 U.S.C. section 371 (1964 ed.). The latter section, the general conspiracy statute, makes it a crime to conspire to commit any offense against the United States. The penalty for violation is the same as for direct violation of section 242-that is, it is a misdemeanor.[4]

On a motion to dismiss, the District Court sustained this First Count as to all defendants. As to the sheriff, deputy sheriff and patrolman, the court recognized that each was clearly alleged to have been acting "under color of law" as required by section 242.[5] As to the private persons, the District Court held that "[I]t is immaterial to the conspiracy that these private individuals were not acting under color of law " because the court the count charges that they were conspiring with persons who were so acting. See *United States, v. Rabinowich,* 238 U.S. 78,87.

The court necessarily was satisfied that the indictment, in alleging the arrest, detention, release, interception and killing of Schwerner, Chaney and Goodman, adequately stated as the purpose of the conspiracy, a violation of section 242, and that this section could be violated by "willfully subject[ing the victims]... to the deprivation of their right, privilege and immunity" under the Due Process Clause of the Fourteenth Amendment.

No appeal was taken by the defendants from the decision of the trial court with respect to the First Count and it is not before us for adjudication.

The Second, Third and Fourth Counts of the indictment in No. 60

5. "If . . . the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor." 18 U.S.C. section 371 (1964 ed.).
6. This is settled by our decisions in *Screws v. United States,* 325 U.S. 91, 107-113, and *Williams* II, 341 U.S., at 99-100.

Charge all of the defendants, not with conspiracy, but with substantive violations of section 242. Each of these counts charges tdhat the defendants, acting "under color of the laws of the State of Mississippi," did willfully assault, shoot and kill" Schwerner, Chaney and Goodman, respectively, "for the purpose and with the intent" of punishing each of the three and that the defendants "did thereby willfully deprive each " of rights, privileges and immunities secured and protected by the Constitution and the laws of the United States"
Namely, due process of law.

The District Court held these counts of the indictment valid as to the sheriff, deputy sheriff and patrolman. But it dismissed them as against the non official defendants because the counts do not charge that the latter were "officers in fact, or de facto in anything allegedly done by them "under color of law.'"

We note that by sustaining these counts against the three officers, the court again necessarily concluded that an offense under section 242 is properly stated by allegations of willful deprivation, under color of law, of life and liberty without due process of law. We agree. No other result would be permissible under the decisions of this Court. *Screws v. United States,* 325 U.S. 91; Williams II[6]

But we cannot agree that the Second, Third or Fourth Counts may be dismissed as against he nonofficial defendants. Section 242 applies only where a person indicted has acted "under color" of law. Private persons, jointly engaged with state officials in the prohibited action; are acting "under color" of law for purposes of the statute

6" ... where police take matters in their own hands, seize victims, beat and pound them until they confess, there cannot be the slightest doubt that the police have deprived the victim of a right under the Constitution. It is the right of the accused to be tried by a legally constituted court, not by a kangaroo court." *Williams* II, 341 U.S., at 101.

To act " under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents. [7]

In the present case, according to the indictment, the brutal joint Adventure was made possible by state detention and calculated

7 " Under color' of law means the same thing in section 242 that it does in the civil counterpart of section 242, 42 U.S.C. section 1983 (1964) ed.). *Monroe v. Pape,* 365 U.S. 167, 185 (majority opinion), 212 (Frankfurter, J., Dissenting). In cases under section 1983, "under color" of law has Consistently been treated as the same thing as the state action" required under The Fourteenth Amendment, See e.g., *Smith v. Allwright,* 321 U.S. 649; *Terry v. Adams,* 345 U.S. 461; *Simkins v. Moses H. Cone Memorial Hospital,*

323 F.2d 959, (C. A. 4th Cir.), *cert.* denied, 376 U.S 938; *Smith v. Holiday Inns,* 336 F.2d 630 (C.A. 6th Cir.); *Hampton v. City of Jacksonville,* 304 F.2d 320 (C.A. 5th Cir.); cert denied, 371 U.S. 911; Boman v. Birmingham Transit Co., 280 F.2d 531 (C.A. 5th Cir.); *Kerr v. Enoch Pratt Free Library,* 149 F.2 D 212 (C.A. 4th Cir.), cert. denied, 326 U.S. 721.

The contrary view in a section 242 context was expressed by the dissenters In *Screws,* 325 U.S., at 147-149, and was rejected then, later in *Williams* II And finally-in a section 1983 case- *Monroe v. Pape, supra.* Cf. *Peterson v City of Greenville,* 373 U. S. 244, 250 (separate opinion of Harlan, J.). Recent decisions of this Court which have given form to the "state action," Doctrine make it clear that the indictments in this case allege conduct on the Part of the "private" defendants which constitutes "state action," and hence Action "under color" of law within section 242. In *Burton v. Wilmington Parking Authority,* 365 U.S. 715, we held that there is "state action," Whenever the "State has so far insinuated itself into a position of Interdependence [with the otherwise ':private' person whose conduct is said To violate the Fourteenth Amendment] . . . that it must be recognized as a Joint participant in the challenged activity, which, on that account, cannot be Considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." 365 U. S., at 725. Cf. *Pennsylvania v. Board of Trusts,* 353 U.S. 230; *Evans v. Newton,* 382 U. S. 296; *Peterson v. City of Greenville,* 373 U.S. 244; *Lombard v. Louisiana,* 373 U.S. 267; *Robinson v. Florida,* 378 U.S. 153, *Griffin v. Maryland,* 378 U.S. 130; American *Communications Ass. V. Douds,* 339 U.S. 382,401; *Public Utilities Comm'n v. Pollak,* 343 U. S. 451; *Smith v. Allwright,* 321 U.S. 649; *Terry v. Adams,* 345 U. S. 461; *Williams* II, 341 U. S., at 99-100.

Release of the prisoners by an officer of the State. This action, clearly attributable to the State, was part of the monstrous design described by the indictment. State officers participated in every phase of the alleged venture: the release from jail, the interception, assault and murder. It was a joint activity, from start to finish. Those who took advantage of participation by state officers in accomplishment of the foul purpose alleged must suffer the consequences of that participation. In effect, if the allegations are true, they were participants in official lawlessness, acting in willful concert with state officers and hence under color of law.

Appelles urge that the decision of the District Court was based Upon a construction of the indictment to the effect that it did not charge the private individuals with acting "under color" of law. Consequently, they urge us to affirm in No. 60. In any event, they Submit, since the trial; court's decision was based on the inadequacy of the indictment and not on construction of the statute, we have no Jurisdiction to review it on direct appeal. *United States v. Swift & Co.* 318 U. S. 442. We do not agree. Each count of the indictment specifically alleges that all of the defendants were acting "under color of the laws of the State of Mississippi." The fault lies not in the indictment, but in the District Court's view that the statute requires that each offender be an official or that he act in an official capacity. We have jurisdiction to consider this statutory question on direct appeal and , as we have shown, the trial court's determination of it is in error. Since each of the private individuals is indictable as a principal acting under color of law, we need not consider whether he might be held to answer as an "aider or abettor: under 18 U.S.C. section 2 (1964 ed.), despite omission to include such a charge in the indictment.

Accordingly, we reverse the dismissal of the Second Third and Fourth Counts of the indictment in No. 60 and remand for trial.

II. No. 59.

No. 59 charges each of the 18 defendants with a felony-a violation of section 241. This indictment is in one count. It charges that the

defendants "conspired to-gether . . . to injure, oppress, threaten and intimidate" Schwerner, Chaney and Goodman "in the free exercise and enjoyment of the right and privilege secured to them by the Fourteenth Amendment to the Constitution of the United States not to be deprived of life or liberty without due process of law by persons acting under color of the laws of Mississippi." The indictment alleges that it was the purpose of the conspiracy that Deputy Sherriff Price would release Schwerner, Chaney and Goodman from custody in the Neshoba County jail at such time that Price and the other 17 defendants "could and would intercept" them "an threaten, assault, shoot and kill them." The penalty under section 241 is a fine of not more than $5,000, or imprisonment for not more than 10 years. Or both.

Section 241 is a conspiracy statute. It reads as follows:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secure to him by the Constitution or laws of the United States, or because of his having so exercise the same; or

"If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-

"They shall be fined not more than $5000 or imprisoned not more than twenty years, or both."

The District Court dismissed the indictment as to all defendants. In effect, although section 241 includes rights or privileges secured by the Constitution or laws of the United States without qualification or limitation, the court held that it does not include rights protected by the Fourteenth Amendment.

It will be recalled that in No. 60 the District Court held that

section 242 included the denial of Fourteenth Amendment rights-the same right to due process involved in the indictment under section 241. Both include rights or privileges secured by the Constitution or laws of the United States. Neither is qualified or limited. Each includes, presumably, all of the Constitution and laws of the United States. To the reader of the two sections, versed only in the English language, it may seem bewildering that the two sections could be so differently read.

But the District Court purported to read the statutes with the gloss of *Williams* I. In that case, the only case in which this Court has squarely confronted the point at issue, the Court did in fact sustain dismissal of an indictment under section 241. But it did not, as the District Court incorrectly assumed, hold that section 241 is inapplicable to Fourteenth Amendment rights. The Court divided equally on the issue. Four Justices, in an opinion by Mr. Justice Frankfurter, were of the view that section 241 "only covers conduct which interferes with rights arising from the substantive powers of the Federal Government" –rights "which Congress can beyond doubt Constitutionally secure against interference by private individuals." 341 U.S., at 73,77. Four other Justices, in an opinion by Mr. Justice Douglas, found no support for Mr. Justice Frankfurter's view in the language of the section, its legislative history, or its judicial interpretation up to that time. They read the statute as plainly covering conspiracies to injure others in the exercise of Fourteenth Amendment rights. They could see no obstacle to using it to punish deprivations of such rights. Dismissal of the indictment was affirmed because Mr. Justice Black voted with those who joined Mr. Justice Frankfurter. He did so, however, for an entirely different reason-that the prosecution was barred by res judicata-and he expressed no view on the issue whether "section 241, as applied, is too vague and uncertain in scope to be consistent with the Fifth Amendment." *Williams* I thus left the proper construction of section 241, as regards its applicability to protect Fourteenth Amendment rights, an open question.

In view of the detailed opinions in *Williams* I thus left the proper construction of 241, as regards its applicability to protect Fourteenth Amendment rights, an open question. We conclude that the District Court erred; that section 241 must be read as it is written-to reach conspiracies " to injure... any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States..."that this language includes rights or privileges protected by the Fourteenth Amendment; that whatever the ultimate coverage of the section may be, it extends to conspiracies otherwise within the scope of the section, participated in by officials alone or in collaboration with private persons; and that the indictment in No. 59 properly charges such a conspiracy in violation of section 241. We shall confine ourselves to a review of the major considerations which induce our conclusion.

1. There is no doubt that the indictment in No. 59 sets forth a conspiracy within the ambit of the Fourteenth Amendment. Like the indictment in No. 60, *supra*, it alleges that the defendants acted "under color of law" and that the conspiracy included action by the State through its law enforcement officers to punish the alleged victims without due process of law in violation of the Fourteenth Amendment's direct admonition to the States.

The indictment specifically alleges that the sheriff, deputy sheriff and a patrolman participated in the conspiracy; that it was a part of the "plan and purpose of the conspiracy" that Deputy Sheriff Price, "while having [the three victims]... in his custody in the Neshoba County Jail... would release them from custody at such time that he [and others of the defendants] ... could and would intercept [the three victims]... and threaten, assault, shoot and kill them."

This is an allegation of state action which, beyond dispute, brings the conspiracy within the ambit of the Fourteenth Amendment. It is an allegation of official, state participation in murder, accomplished by and through its officers with the participation of others. It is an allegation that the State, without the semblance of due process of law

as required of it by the Fourteenth Amendment, used its sovereign power and office to release the victims from jail so that they were not charged and tried as required by law, but instead could be intercepted and killed If the Fourteenth Amendment forbids denial of counsel, it clearly denounces denial of any trial at all.

As we have consistently held "The Fourteenth Amendment protects the individual against *state action*, not against wrongs done by *individuals," Williams* I, 341 U.S., at 92 (opinion of Douglas, J.). In the present case, the participation by law enforcement officers, as alleged in the indictment, is clearly state action, as we have discussed, and it is therefore within the scope of the Fourteenth Amendment.

2. The Argument, however, of Mr. Justice Frankfurter's opinion in Williams I upon which the District Court rests its decision, cuts beneath this. It does not deny that the accused conduct is within the scope of the Fourteenth Amendment, but it contends that in enacting section 241, the Congress intended to include only the rights and privileges conferred on the citizen by reason of the "substantive" powers of the Federal Government-that is, b y reason of federal power operating directly upon the citizen and not merely by means of prohibitions of state action. As the Court of Appeals for the Fifth Circuit in Williams I relied upon in the opinion below, put it, "the Congress had in mind the federal rights and privileges which appertain to citizens as such and not the general rights extended to all persons by the.... Fourteenth Amendment." 179 F.2d 644, 648. We do not agree.

The language of section 241 is plain and unlimited. As we have discussed, its language embraces *all* of the rights and privileges secured to citizens by *all* of the Constitution and all of the laws of the United States. There is no indication in the language that the sweep of the section is confined to rights that are conferred by or "flow from" the Federal Government, as distinguished from those secured or confirmed or guaranteed by the Constitution. We agree with the observation of Mr. Justice Holmes in United States v. Mosley, 238 U.S. 383, 387-388, that

"The source of this section in the doings of the Ku Klux and the like is obvious and acts of violence obviously were in the mind of Congress put forth all its powers....[T]his section dealt with Federal rights and with all Federal rights, and protected them in the limp..... [It should not be construed so] as to deprive citizens of the United States of the general protection which on its face section 19 [now section 241] most reasonably affords."[8]

We believe, with Mr. Justice Holmes, that the history of the events from which section 241 emerged illuminates the purpose and means of the statute with an unmistakable light. We think that history leaves no doubt that, if we are to give section 241 the scope that its origins dictate, we must accord it a sweep as broad as its language. We are not at liberty to seek ingenious analytical instruments for excluding from its general language the Due Process Clause of the Fourteenth Amendment-particularly since the violent denial of legal process was one of the reasons motivating enactment of the section.[9]

8. See also Mr. Justice Rutledge, concurring in result, in *Screws v. United States* 325 U.S. 91, 120.

9. It would be strange, indeed, were this Court to revert to a construction of the Fourteenth Amendment which would once again narrow its historical purpose-which remains vital and pertinent to today's problems. As is well known, for many years after Reconstruction, the Fourteenth Amendment was

Section 241 was enacted as part of what came to be known as the Enforcement Act of 1870, 16 Stat. 140.[10] The Act was passed on May 31, 1870, only a few months after ratification of the Fifteenth Amendment. In addition to the new section 241, it included a re enactment of a provision of the Civil Rights Act of 1866 which is now section 242. The intended breadth of section 241 is emphasized by contrast with the narrowness of section 242 as it then was[11] The rights protected by the Act were narrow and specific: to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens [and to] be subject to like punishment, pains penalties, taxes, licenses, and exactions of every kind, and noe other." Act of may 31 1870 section 16. 16 Stat. 144 re-enacting with minor changes Act of April 9, 1866 section 1 14 Stat. 27. Between 1866 and 1870 there was much agitated criticism in the Congress and in the Nation because of the continued denial of rights to Negroes, sometimes accompanied by violent assaults. In response to the demands for more stringent legislation Congress enacted the Enforcement Act of 1870. Congress had before it and re-enacted section 242 which was explicitly limited as we have described. At the same time, it included section 241 in the Act using broad language to cover not just the rights enumerated in section 242 but all rights and privileges under the Constitution and laws of the United States.

Was almost a dead letter as far as the civil rights of Negroes were concerned. Its sole office was to impede state regulation of railroads or other corporations. Despite subsequent statements to the contrary, nothing in the records of the Congressional debates or the Joint Committee on Reconstruction indicates any Any uncertainty that its objective was the protection of civil rights. See Stampp, The Eara of Reconstruction, 1865-1877, 136-137 (1965)

10. The official title is "An Act to enforce the Right of Citizens of the United States to vote in the several states of this Union, and for other purposes."

11 The substantial difference in coverage of the two sections as they were in the the Act of 1870 precludes the argument that section 241 should be narrowly construed to exclude the Fourteenth Amendment rights because otherwise it would have been duplicative of section 242 taken in conjunction with the general conspiracy statute, 18 U.S.C. section 371. If, as we hold section 241

It was not until the statutory revision of 1874 that the specific enumeration of protected rights was eliminated from 242. The section was then broadened to include as with range of rights as section 241 already did: "any rights, privileged, or immunities, secured or protected by the Constitution and laws of the United States." The substantial change thus effected was made with the customary stout assertions of the codifiers that they had merely clarified and reorganized without changing substance.[12] Section 241 was left essentially unchanged, and neither in the 1874 revision nor in any subsequent re-enactment has there been the slightest indication of a congressional intent to narrow or limit the original broad scope of section 241. It is clear, therefore, that section 241, from original enactment through subsequent codification's, was intended to deal, as Mr. Justice Holmes put it, with conspiracies to interfere with "Federal rights." We find no basis whatsoever for a judgment of Solomon which would give to the statute less than its words command.[13]

The purpose and scope of the 1866 and 1870 enactments must be viewed against the events and passions of the time.[14] The Civil War had ended in April 1865, Relations between Negroes and whites were increasingly turbulent.[15] Congress had taken control of the governmental process informer Confederate States.

Was intended to cover all Fourteenth Amendment rights, it was far broader In 1870 than was section 242. For other reasons for rejecting the Duplication argument, see the opinion of Mr. Justice Douglas in *Williams* I 341 U.S., at 88, n.2.

12 See 14 Stat. 74; 17 Stat. 579; S. Misc. Doc. No. 101, 40th Cong., 2d Sess.; H. Misc. Doc. No. 31, 40th Cong., 3d Sess.; S. Misc. Doc. No. 3, 42d Cong., 2d Sess.; 2 Cong. Rec. 646, 648, 1029, 1210, 1461

13 The opinion of Mr. Justice Douglas in *Williams* I, 341 U. S. , at 88, disposes of the argument that the words of section 241 themselves suggest the narrow meaning which the opinion of Mr. Justice Frankfurter found in the section.

14 See generally, Stampp, The Era of Reconstruction, 1865-1877 (1965); Nevins, The Emergence of Modern America, 1865-1878 (1927).

15 See H.R. Rep. No. 16, 39th Cong., 2d Sess., p. 12 et seq.

It had declared the governments in 10 "unreconstructed" States to be Illegal and had set up federal military administrations in their place. Congress refused to seat representatives from these States until they had adopted constitutions guaranteeing Negro suffrage, and had ratified the Fourteenth Amendment. Constitutional conventions were called in 1868. Six of the 10 states fulfilled Congress; requirements in 1868. Six of the 10 States fulfilled Congress" requirements in 1868, the other four by 1870.

For a few years "radical" Republicans dominated the governments of the Southern States and Negroes played a substantial political Role. But countermeasures were swift and violent. The Ku Klux Klan was organized by southern whites in 1866 and a similar organization appeared with the romantic title of the Knight of the White Camellia. In 1868 a wave of murders and assaults was launched including assassinations designed to keep Negroes from the polls.[16] The States themselves were helpless, despite the resort by some of them to extreme measures such as making it legal to hunt down and shoot any disguised man.[17]

Within the Congress pressures mounted in the period between and End of the war and 1870 for drastic measures. A few months after the ratification of the Thirteenth Amendment on December 6, 1865. Congress, on April 9, 1866, enacted the Civil Rights Act of 1866, which, as we have described, included section 242 in its originally narrow form. On June 13, 1866, the Fourteenth Amendment was proposed, and it was ratified in July 1868. In February 1869 the Fifteenth Amendment was proposed, and was ratified in February 1870, the Enforcement Act of 1870 was enacted.

In this context, it is hardly conceivable that Congress intended section 241 to apply only to a narrow and relatively unimportant category of rights.[18] We cannot doubt that the purpose and effect of

16. Cf. Nevins, *op. cit. supra,* at 351.

17. See, *id.*, at 352; Morison, Oxford History of the American People 722-723 *(1965).*

18 See, for example, United States, v. Waddell, 112 U.S. 76 (right to perfect a homestead claim); *United States v.Classic,* 313 U.S. 299 (right to vote in

Section 241 was to reach assaults upon rights under the entire Constitution, including the Thirteenth, Fourteenth and Fifteenth Amendments, and not merely under part of it.

This is fully attested b y the only statement explanatory of section 241 in the recorded congressional proceedings relative to its enactment. We refer to the speech of Senator Pool of North Carolina who introduced the provisions as an amendment to the Enforcement Act of 1870. The Senator's remarks are printed in full in the Appendix in this opinion.[19] He urged that the section was needed in order to punish invasions of the newly adopted Fourteenth and Fifteenth Amendments to the Constitution. He acknowledged that the States as such were beyond the reach of the punitive process, and that the legislation must therefore operate upon individuals. He made it clear that "it matters not whether those individuals be officers or whether they are acting upon their own responsibility." We find no evidence whatever that Senator Pool intended that section 241 should not cover violations of Fourteenth Amendment rights, or that it should not include state action or actions by state officials.

We conclude, therefore, that it is incumbent upon us to read section 241 with full credit to its language. Nothing in the prior decisions of this court or of other courts which have considered the matter stands in the way of that conclusion.[20]

The present application of the statutes at issue does not raise fundamental questions of federal-state relationships. We are here concerned with allegations which squarely and indisputably involve state action in direct violation of the mandate of the Fourteenth Amendment-that no State shall deprive any person of life or liberty without due process of law. This is a direct, traditional concern of

Federal elections); *Logan v. United States.* 144 U.S. 263 (right to be secure From unauthorized violence while in federal custody); *In re Quarles,* 158 U.S. 532 (right to inform of violations of federal law). CF. also *United States v. Cruikshank,* 92 U.S. 542,552; *Hague v. CIO,* 307 U.S. 496, 512-513 (opinion of Roberts, J.); *Collins v. Handyman,* 341 U. S. 651, 660.

19 We conclude these remarks only to show that the Senator clearly intended section 241 to cover Fourteenth Amendments rights.

The federal government. It is an area in which the federal interest has existed for at least a century, and in which federal participation has intensified as part of a renewed emphasis upon civil rights. Even as recently as 1951, when *Williams* I was decided, the federal role in the establishment and vindication of fundamental rights-such the Freedom to travel, nondiscriminatory access to public areas and non-Discriminatory educational facilities-was neither as pervasive nor as intense as it is today. Today a decision interpreting a federal law in accordance with its historical design, to punish denials by state action of constitutional rights of the person can hardly be regarded as adversely affecting "the wise adjustment between State responsibility and national control . . . " *Williams* I, 341 U. S., at 73 (opinion of Frankfurter, J.). In any event, the problem, being statutory and not constitutional, is ultimately, as it was in the beginning, susceptible of congressional disposition.

Reversed and remanded.

Mr. Justice Black concurs in the judgment and opinion of the Court except insofar as the opinion relies upon *United States v Williams,* 341 U.S. 58; *United States v. Williams,* 341 U.S. 70; and *Williams v. United States,* 341 U.S. 97

APPENDIX TO THE OPINION OF THE COURT

Remarks of Senator Pool of North Carolina on sponsoring Sections 5, 6, and 7 of the Enforcement Act of 1870 (Cong. Globe, 41 Cong. 2d Ses., pp 3611-3613):

Mr. Pool, Mr. President, the question involved in the proposition now before the Senate is one in which my section of the Union is particularly interested; although since the ratification of the fifteenth amendment, which we are no about to enforce by appropriate

legislation, other sections of the country have become more or less interested in the same question. It is entering upon a new phase of reconstruction; that is, to enforce by appropriate legislation those great principle upon which the reconstruction policy of Congress was based.

I said upon a former occasion on this floor that the reconstruction policy of Congress had been progressive, and that it was necessary that it should be progressive still. The mere act of establishing governments in the recently insurgent States was one thing; the great principles upon which Congress proposed to proceed in establishing those governments was quite another thing, involving principles which lie at the very foundation of all that has been don, and which are intimately connected with all the results that must follow from that and from the legislation of Congress connected with the whole subject.

Mr. President, the first thing that was done was the passage of the thirteenth amendment, by which slavery in the United States was abolished. By that four millions of people were taken out from under the protecting hand of interested masters and turned loose to take care of themselves. They were turned loose and put upon their own resources in communities which were imbued with prejudices against them as a race, communities which for the most part had for years past-indeed from the very time when those who are not in existence were born-been taught and had instilled into them a prejudice against the equality which has been attempted to b e established for the colored citizens of the United States.

Mr. President, the condition which that thirteenth amendment imposed on the late insurrectionary States was one which demanded the serious consideration and attention of this Government. The equality which by the thirteenth, fourteenth, and fifteenth amendments has been attempted to b e secured for the colored men, has not only subjected them to the operation of the prejudices which had theretofore existed, but it has raised against them still stronger prejudices and stronger feelings in order to fight down the equality by which it is claimed they are to control the legislation of that

section of the country. They were turned loose among the white citizens there who have sought to maintain the rights which you have thrown upon that class of people, have to endure every species of proscription, of opposition, and of vituperation in order to carry out the policy of Congress, in order to lift up and to uphold the rights which you have conferred upon that class. It is for that reason not only necessary for the freedmen, but it is necessary for the white people of that section that there should be stringent and effective legislation on the part of Congress in regard to these measures of reconstruction.

We have heard on former occasions on the floor of the Senate that there were organizations which committed outrages, which went through reconstruction.

We have heard on former occasions on the floor of the Senate that there were organizations which committed outrages, which went through communities for the purpose, of intimidating and coercing classes of citizens in the exercise of their rights. We have been told here that perhaps it might be well that retaliation should be resorted to on the part of those who are oppressed. Sir, the time will come when retaliation will be resorted to unless the Government of the United States interposes to command and to maintain the peace; when there will be bloodshed and tumult in various communities and sections. It is not only necessary for the freedmen, but it is important to the white people of the southern section, that by plain and stringent laws the United States should interpose and preserve the peace and quiet of the community.

The fifteenth amendment to the Constitution of the United States provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of race, color, or previous condition of servitude. It speaks of "the right of citizens to vote." It has been said that voting is a privilege; but this amendment recognizes it as a right in the citizen; and this right is not to "be denied or abridged by the United States, or by any State." What are we to understand by that? Can

individuals abridge it with impunity? Is there no power in this Government to prevent individuals or associations of individuals from abridging or contravening that provision of the Constitution? If that be so legislation is unnecessary. If our legislation is to apply only to the States it is perfectly clear that it is totally unnecessary, inasmuch as we cannot pass a criminal law as applicable to a State; nor can we indict a State officer as an officer. It must apply individuals. A State might attempt to contravene that provision of the Constitution by passing some positive enactment by which it would be contravened, but the Supreme Court would hold such enactment to be unconstitutional, and in that way the State would be restrained. But the word "deny" is used. There are various ways in which a State may prevent the full operation of this constitutional amendment. It cannot-because the courts would prevent it-by positive legislation, but by acts of omission it may practically deny the right. The legislation of Congress must be to supply acts of omission on the part of the States. If a State shall not enforce its laws by which private individuals shall be prevented by force from contravening the rights of the citizens under the amendment, it is in my judgment the duty of the United States Government to supply that omission, and by its own laws and by its own courts to go into the States for the purpose of giving the amendment vitality there.

The word "deny" is used not only in the fifteenth amendment, but I Perceive in the fourteenth amendment it is also used. When the fourteenth amendment was passed there was an existence what is known as the civil rights bill, a part of which has been copied in the Senate bill now pending. The civil rights bill recognized all persons born or naturalized in the United States as citizens, and provided that they should have certain rights which were enumerated. They are, "to make and enforce contracts, to sue, be made parties, give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property," and to the full and equal benefit of all laws and proceedings for the security of person and property."

The civil rights bill was to be enforced by making it criminal for

any officer, under color of any State law, "to subject, or cause to be subjected, any citizen to the deprivation of any of the rights secured and protected" by the act. If an officer of any State were indicted for subjecting a citizen to the deprivation of any of those rights he was not to be indicted as an officer; it was an individual. And so, under the fourteenth amendment to the Constitution, " no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." There the word "deny"; it is used in contradistinction to the first clause, which says, "No State shall make or enforce any law" which shall do so and so. That would be a positive act which would contravene the right of a citizen; but to say that it shall not deny to any person the equal protection of the law it seem to me opens up a different branch of the subject. It shall not deny by acts of omission , by a failure to prevent its own citizens from depriving by force any of their rights, that the provision of the fifth section of the fourteenth amendment would be called into operation, which is, "that Congress shall enforce by appropriate legislation the provisions of this article."

There is no legislation that could reach a State to prevent its passing a law. It can only reach the individual citizens of the State in the enforcement of law. You have, therefore, in any appropriate legislation, to act on the citizen, not on the State. If you pass an act by which you make it an indictable offense for an officer to execute any law or a State by which he trespasses upon any of these rights of the citizen it operates upon him as a citizen, and not as an officer. Why can you not just as well extend it to any other citizen of the country?

It is in my judgment, incumbent upon Congress to pass the most stringent legislation on this subject. I believe that we have a perfect right under the Constitution of the United States, not only under these three amendments, but under the general scope and features and spirit of the Constitution itself, to go into any of these states for

the purpose of protecting and securing liberty. I admit that when you go there for the purpose of restraining liberty, you can go only under delegated powers in express terms; but to go into the States for the purpose of securing and protecting the liberty of the citizen and the right and immunities of American citizenship in accordance with the spirit and whole object of the formation of the Union and national Government.

There are, Mr. President, various ways in which the right secured By the Fifteenth amendment may be abridged by citizens in a State. If a State should under take by positive enactment, as I have said, to abridge the right of suffrage, the courts of the country would prevent it; and I find that in section two of the bill which has been proposed as a substitute by the Judiciary Committee of the Senate provision is made for cases where officers charged with registration or officers charged with the assessment of taxes and with making the proper entries in connection therewith, shall refuse the right to register or to pay taxes to a citizen. I believe the language of the Senate bill is sufficiently large and comprehensive to embrace any other class of officers that might be charged with any act that was necessary to enable a citizen to perform any prerequisite to voting. But, sir, individuals may prevent the exercise of the right of suffrage; individuals may prevent the enjoyment of other rights which are conferred upon the citizen by the fourteenth amendment, as well as trespass upon the right conferred by the fifteenth. Not only citizens, but organizations of citizens, conspiracies, may be and are, as we are told, in some of the States formed for that purpose. I see in the fourth section of the Senate bill a provision for cases where citizens by threats, intimidation, bribery, or otherwise prevent, delay, or hinder the exercise of this right; but there is nothing here that strikes at organizations of individuals, at conspiracies for that purpose. I believe that any bill will be defective which does not make it a highly penal offense for men to conspire together, to organize themselves into bodies, for the express purpose of contravening the right conferred by the fifteenth amendment.

But, sir, there is a great, important omission in this bill as well as in that of the House. It seems not to have struck those who drew either

of the two bills tdhat the prevention of the exercise of the right of suffrage was not the only or the main trouble that we have upon our hands. Suppose there shall be an organization of individuals, or, if you please, a single individual, who shall take it upon himself to compel his fellow citizens to vote in a particular way. Suppose he threatens to discharge them from employment, to bring upon them the outrages which are being perpetrated by the Ku Klux organizations, so as not to prevent their voting, but to compel them to vote in accordance with the dictates of the party who brings this coercion upon them. It seems to me it is necessary that we should legislate against that. That is a more threatening view of the subject than the mere preventing of registration or of entering men's names upon the assessment books for taxation or of depositing the ballot in the box. I think the bill cannot be perfected to meet the emergencies of the occasion unless there be a section which meets that view of the case.

The Senator from Indiana [Mr. Morton] asks whether I have drawn an amendment to that effect. I have, but I cannot offer it at this time, for the simple reason that there is a amendment to an amendment pending;.

Mr. Morton. Let it be read for information.

Mr. Pool. It has been printed, and I send it to the desk to be read for information.

The chief Clerk read the amendment intended to be proposed by Mr. Pool, as follows:

"Insert after section four of the Senate Bill the following sections:

"SEC. 5. And be it further enacted, that it shall be unlawful for any person, with intent to hinder or influence the exercise of the right of suffrage as aforesaid, to coerce or intimidate, or attempt to coerce or intimidate any of the legally qualified voters in any State or Territory. Any person violating the provisions of this section shall be held guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned, or both, in the discretion of the court: the fine not to exceed $1,000, and the imprisonment not to exceed one year.

"SEC. 6" And be if further enacted, That if two or more persons

shall band or conspire together, or go in disguise upon the public highway, or upon the premises of an other, with intent to violate any provision of this act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, such person shall be held guilty of a felony, and on conviction thereof shall be fined and imprisoned; the fine not to exceed $5000 and imprisonment not to exceed ten years; and shall, moreover, be thereafter ineligible to and disabled from holding any office or place of honor. Profit or trust created by the Constitution or laws of the United States.

"SEC 7" And be it further enacted, That if in the act of violating any provision in either of the two proceeding sections, any other felony, crime, or punishment or misdemeanor shall be committed, the offender may be indicted or prosecuted for the same in the courts of the United States, as hereinafter provided, for violations of this act and on conviction thereof shall be punished for the same with such punishments as are attached to like felonies, crimes, and misdemeanors by the laws of the State in which the offense may be committed.

"Strike out section twelve and substitute therefor the following:

"And be it further enacted, That the President of the United States, our such person as he may empower for that purpose, may employ in any State such part of the land and naval forces of the United States, or of the militia, as he may deem necessary to enforce the complete execution of this act; and with such forces may pursue, arrest, and hold for trial all persons charged with the violation of any of the provisions o9f this act, and enforce the attendance of witnesses upon the examination or trial of such persons."

Mr. Pool. The Senator from Indiana asked if I had an amendment prepared which met the view of the case I was presenting in regard to the compelling of citizens to vote in a particular way. The first section of the amendment which I have offered uses this language:

"That it shall be unlawful for any person with intent to hinder of influence the exercise of the right of suffrage as aforesaid, to coerce

or intimidate or attempt to coerce or intimidate any of the legally qualified voter in any State or Territory."

But, Mr President, there is another view which seem to have been lost sight of entirely by those who have drawn both the House bill and the bill now pending before the Senate, and from which we apprehend very much danger. It is this: the oppression of citizens because of having voted in a particular way, or having voted at all. It may often happen, as it has happened up to this time already, that upon the close of an election colored persons will be discharged from employment by their employers. They may be subjected to outrages of various kinds because they have participated in an election, and cast their votes in a particular way. That is not done for the purpose of punishment so much as for the purpose of deterring them from voting in any succeeding election, or from voting in a way that those who perpetrate these outrage do not desire to do. I find that branch of the subject is entirely left out of view in the bill

There is another feature of my amendment which I deem of some importance. It is this:

"That if in the act of violating any provision in either of the two preceding sections any other felony, crime, or misdemeanor shall be committed, the offender may be indicted or prosecuted for the same in the courts of the United States.

I think the most effective mode of preventing this intimidation and these attempts at coercion, as well as the outrages which grow out of these attempts, would b e found in making any offense committed in the effort to violate them indictable before the courts of the United States. As was said before, in the discussion of the Georgia question in the Senate, the juries in the communities where these outrages are committed are often composed of men who are engage in them, or of their friends, or of those who connive at them, or of persons intimidated by them, and in many instances they dare not bring in a true bill when there is an attempt to indict, or if a true bill be found, they dare not go for conviction on the final trial. It is for that reason that I believe it will be better, it will be the only effective remedy, to take such offenders before the courts of the united States, and there

have them tried by a jury which is not imbued with the prejudices and interests of those who perpetrate the crimes.

These are the principal features of the amendment which I have drawn in the effort to perfect this bill; and there is another one to which I will call the attention of the Senate. It is that in regard to calling out the military forces of the United States. I find that in the civil rights bill, as in the bill which has been introduced by the Senate Judiciary Committee, the President is authorized, either by himself or by such person as he may empower for that purpose, to use the military forces of the United States to enforce the act. There is both instances it stops. It has been objected to here that the expression, "or such other person as he may empower for that purpose," to use the military forces of the United States to enforce the act. There in both instances it stops. It has been objected to here that the expression, " or such other person as he may empower for that purpose," should not be in the bill; that it may be subject to abuse. I think it would have no good effect to keep that language in. The President may send his officers and he may empower whomsoever he pleases to take charge of his forces without any such provision.

But there is a use for these forces which seems not to have been adverted to in either the civil rights bill or in the bill that is not pending before the Senate. It is the holding of these offenders for examination and trial after they are arrested. Their confederates, if they are put in the common prisons of the State, will in nine case out of ten release them. But more important still it is to use these forces to compel the attendance of witness; for a subterfuge resorted to is to keep witness away from the trial. In many instances witnesses are more or less implicated in the commission of the offense. In other cases the witnesses are intimidated and cannot be obtained upon the trial. So in the amendment which I have prepared I have proposed that these forces may by used to enforce the attendance of witnesses both upon the examination and the trial. My purpose in introducing this was to perfect the Senate bill. I think , as I said yesterday, that that bill is liable to less objection than the House bill. I think it is more efficacious in its provisions. I think it is better that the

Sednatge Should direct its attention to perfecting that bill, in order that it may be made, when perfected, a substitute for the bill that came from the House.

That much being said upon the purpose of perfecting the bill and making it efficacious, I have very little more to say. I did not intend when I rose to say much upon the general power, which has been questioned here, to pass any law at all. I think it is better to do nothing than to do that which will not have the proper effect. T do that which will not accomplish the purpose would be worse than doing noting at all. That the United States Government has the right to go into the States and enforce the fourteenth and the fifteenth amendments is, in my judgment, perfectly clear, by appropriate legislation that shall bear upon individuals. I cannot see that it would be possible for appropriate legislation to be resorted to except Applicable to individuals who violate or attempt to violate these provisions. Certainly we cannot legislate here against States. As I said a few moments ago, it is upon individuals that we must press our legislation. It matters not whether those individuals be officers or whether they are acting upon their own responsibility; whether they are acting singly or in organizations. If there is to be appropriate legislation at all, it must be that which applies to individuals.

I believe that the United States has the right, and that it is an incumbent duty upon it, to go into the States to enforce the rights of the citizens against all who attempt to infringe upon those rights when they are recognized and secured by the Constitution of the Country. If we do not possess that right the danger to the liberty of the citizen is great indeed in many part of this Union. I think this question will come time and again as years pass by, perhaps before another year, indifferent forms before the Senate. It is well that we should deal with it now and deal with it squarely, and I hope that the Senate will not hesitate in doing so.

Mr. President, the liberty of a citizen of the United States, the prerogatives, the rights, and the immunities of American citizenship, should not be and cannot be safely left to the mere caprice of States

either in the passage of laws or in the withholding of that protection which any emergency may require. If a State by omission neglects to give to every citizen within its borders a free, fair, and full exercise and enjoyment of his rights it is the duty of the United States Government to go into the State, and by its strong arm to see that he does have the full and free enjoyment of those rights.

Upon that ground the Republican party must stand in carrying into effect the reconstruction policy, or the whole fabric of reconstruction, with all the principles connected with it, amounts to nothing at all; and in the end it will topple and fall unless it can be enforced by the appropriate legislation, the power to enact which has been provided in each one of the great charters of liberty which that party has put forth in its amendments to the Constitution. Unless the right to enforce it by appropriate legislation is enforced stringently and to the point, it is clear to my mind that there will be no efficacy whatever in what has been done up to this time to carry out and to establish that policy.

I did not rise, sir, for the purpose of arguing the question very much in detail. I did not rise for the purpose of making any appeals to the Senate; but more for the purpose of asserting here and arguing for a moment the general doctrine of the right of the United States to intervene against individuals in the State who attempt to contravene the amendment to the Constitution which we are not endeavoring to enforce, and for the purpose of calling attention to the defects in the bill and offering a remedy for them

JURISDICTIONAL STATEMENT

The jurisdiction of this United States Supreme Court arises from The Judgment of the district court to close the case for all the defendants on March 21, 2001. The denial of the Motion for Reconsideration on August 3, 2001 by the district court, the Appeal of petitioner on August 21, 2001. The United States Court of Appeals for the Second Circuit affirming the decision of the District Court on June 18, 2002, the United States Court of Appeals for the Second Circuit denying the Petition for Panel Rehearing on July 30, 2002.

The United States District Court entered a final judgment to close the case, giving the United States Court of Appeals for the Second Circuit Jurisdiction under Title 28 section 1291 Final decision of the District Court. Jurisdiction is transferred to the Circuit Court. ("[t]he filing of a notice of appeal is an event of jurisdiction (sic) significance - it confers jurisdiction on the court of appeals and divests the district court of it control over those aspects of the case involved in the appeal") See *Griggs v. Provident Consumer Discount Co.* 459 U.S. 36,38 103 S. Ct., 404 74 L.Ed.2d 225 (1982).

The federal statute that governs the Court of Appeals, Title 28 U.S.C,S. Section 1254 Courts of Appeals; Certiorari; Certified questions. This Writ of Certiorari is not wholly founded on the Court of Appeals, they are directed toward title 28 section 1291, Final Decision of the District Court.

Title 28 U.S.C.S. Section 2101 Supreme Court; time for appeal for Certiorari; docketing; stay (c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for writ of certiorari for period not exceeding 60 days. Also the jurisdiction lies in the U.S.C.S. Rules of the Supreme Court.

370 **UNITED STATES DISTRICT COURT**
DISTRICT OF CONNECTICUT

FILED
MAR 21 1: 23 PM'01

FRANK D. PALUMBO

Vs **CIVIL NO:3:98CV1411(JBA)**

SANFORD I. WEILL, JOSEPH PETRO. THOMAS UNTERBERG, DERYCK MAUGHN, ZUHARE TABARRA, JAMES TURRENTINE, PETER WADS, DAVID GUGGENHEIM, WILLIAM KRELIK, LEE A. IACOCCA, DONALD CATA, JOAN WEILL, WILLIAM CHAIRENZELLI, RICHARD S. GOUGH, PAUL D. AUDLEY RONALD SULLIVAN, JOSEPH SAMBROOK, DANIEL GARNER, THOMAS RAGLAND, KENNETH MOUGHTY, DAVID H. BUCHANAN, NOEL PADDEN, JOSEPH GANIM, THOMAS I. SWEENEY, JOHN SOLOMON, MARK S. BARNHARDT, ROBERT MOSSMANN, ROGER L. MACEY, H. RICHARD BORER, MICHAEL KELLY, WILLIAM JOHNSON, ROBERT H. RUSSELL, JR., ANGELO TOSCANO, WILLIAM vonZEHLE, FREDERICK L. LISMAN, THOMAS FLAHERTY, WILLIAM GRIZE, CARMINE IAPALUCCIO, DANIEL MIGLIO, BERNARD MARCU, DAVID SAAD, SYLVESTER COCIVI (aka Buster Cocivi), MARGARET CASETLLUCI, ANDREW DIJAK, PETER CARINI, FRANCES PALUMBO, DARREN PALUMBO, PAUL LYPOLE, HANK McINERY, ROBERT J. EATON, CARL WYSOPAL,

WILLIAM ROGERS, WARREN JOBLIN, STEPHEN PRUDENTE, JUDY PALUMBO, IRVING GORDON RONALD WHITE AND HARRY RICHARDSON

EOD 3/21/01

JUDGMENT

This matter came on for consideration on defendants' motion to dismiss before the Honorable Janet Bond Arterton, United States District Judge.

The Court has reviewed all of the papers in conjunction with the motions and on March 20, 2001, the Court entered a Ruling granting defendants Saad, Ganim, Sweeney, Lypole, Audley, Sullivan, Sambrook, Gardner, Marcus, Gough, Ragland, Moughty, Cocivi, Carini, Borer, Kelly and Johnson's motions to dismiss. On June 2, 2000, a Ruling entered dismissing defendants Joblin, McInery, Buchanan, Lisman, Solomon, Barnhardt, Mossman, Macey, Miglio, Chiarenzelli, Flaherty, S. Weill, Petro, Unteraberg, Maughn, Tabarra, Turrentine, Wads, Guggenheim, Krelick, Iacocca, Cata, J. Weill, Russell, Toscano, vonAehle, Rogers, Wysopal, Eaton, D. Palumbo, F. Palumbo, Dijak, Castelucci, Iapalkuccio, Grize, Prudente, J. Palumbo, Gordon, White and Richardson.

It is therefore ORDERED and ADJUGED that judgment is entered for all defendants and the case is closed.

Dated at New Haven, Connecticut, this 21 day of March 2001.

KEVIN F. ROWE, CLERK

By "S/_____"
Betty J. Torday
Deputy Clerk

369 **UNITED STATES DISTRICT COURT**
DISTRICT OF CONNECTICUT **FILED**
MAR 20 2:27 PM' 01

FRANK D. PALUMBO :

v. : No.3:98cv1411 (JBA)

SANFORD I. WEILL, ET AL

RULING ON PENDING MOTIONS

By Ruling dated September 29, 1999, this Court approved and adopted Magistrate Judge Garfinkel's Recommended Ruling dismissing the claims against all defendants. Some defendants were dismissed for insufficiency of service, some for failure to post bond, while other were dismissed for failure to state a cause of action, failure to comply with the requirements of Fed. R.Civ. 8(a), and /or lack of subject matter jurisdiction."
Ruling on Plaintiff's objection to Magistrate's Recommended Ruling (Doc. #233). Due to plaintiff's pro se status, the Court allowed him on final opportunity to file an amended complaint, directing that it be filed by no later than October 30, 1999. Plaintiff was prohibited from asserting claims in his amended complaint against certain defendants who had been dismissed on different grounds, and he was allowed to include claims against another set of defendants only if he posted $ 500 bond by October 15, 1999. The Court further directed the plaintiff that if any such Amended Complaint were filed, it "must state clearly and concisely, as to each defendant, when and how that defendant has violated plaintiff''s rights under the Constitution." Doc. # 233 at 4.

Plaintiff filed a number of documents before and after the October 30, 1999 deadline, including a number of motions for leave to amend, and on June 2, 2000 this Court ruled that it would "construe plaintiff's motions, Doc. #264, Doc. #271, and Doc. #274, Collectively, as plaintiff's final operative complaint in compliance with the Court's September 29, 1999 order." Ruling on Pending Motions to Amend Complaint (Doc. #302). The eighteen remaining defendants (Bernard Marcus, Paul Audley, Ronald Sullivan, Thomas Ragland, Joseph Ganim, Thomas Sweeney, Joseph Sambrook, Kenneth Moughty, William Johnson, Paul Lypole, Richard Gough, Slyvester Cocivi, Daniel Gardner, David Saad, Noel Padden, Richard Borer, Michael Kelly, and Peter Carini) were ordered to file their Motions to Dismiss directed at the final operative complaint, as construed by the Court's Ruling, by July 30, 2002.

Standard for Motion to Dismiss

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b) (6) should Only to granted if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Lyons v. Legal Aid Society, 68 F.3d 1512, 1514 (2d Cir. 1995) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In Evaluating such a motion , this Court must "view the complaint in the light most favorable to the non-moving party." Newman & Schwartz v. Asplundh Tree Expert Co., 102 F.3d 660, 661 (2d Cir. 1996) (citations omitted). A complaint should not be dismissed for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Padavan v. United States, 82 F.3d 23, 26 (2d Cir. 1996) (quoting Hughes v. Rowe, 449 U.S. 5, 10 (1980). While pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers," and are to be construed liberally, Haines v. Kerner, 404 U.S. 519, 520 (1972), nevertheless, a complaint asserting "only conclusory, vague or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss." Leon v. Murphy, 988 F.2d 303, 311 (2d Cir. 1993).

Rule 8 (a) Standard

Rule 8 provides that a complaint "shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The statement should be plain because the principal function of pleadings under the Federal Rules is to give the adverse party fair notice of the claim asserted so as to enable it to answer and prepare for trial. See, e.g., Geisler v. Petrocelli, 616 F.2d 636, 640 (2d Cir. 1980). The statement should be short because "unnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of Verbage. "Salahuddin v. Cuomo, 861 F.2d 40, 41 (2d Cir. 1995) (citing 5 c. Wright & A. Miller Federal Practice and Procedure section 1281, at 365 (1969)). While the Second Circuit has cautioned district courts from sua sponte dismissing pro se complaints based on a failure to comply with Rule 8(a), an unintelligible and confused complaint may be dismissed with prejudice. See Sallahuddin, 861 F.2d at 41 (court has the power to sua sponte dismiss a prolix complaint without leave to amend in circumstances where leave to amend has previously been given and the successive pleadings remain porlix and unintelligible).

Discussion

1. Liability for Constitutional Violations: Municipal Officials

While Mr. Palumbo has not specified the cause of action Under which he is proceeding, and instead simply cites the Fourth and Fourteenth Amendments as the source of his claims, it is established law that a plaintiff may not avoid the strictures of Section 1983 by asserting a direct claim under a constitutional amendment against a state actor. See Turpin v. Mailet, 591 F2d 426, 427 (2d Cir. 1979). The Court will accordingly construe his claims as brought pursuant to 42 U.S.C. section 1983, which provides the procedural mechanism through which a plaintiff may bring a suit for violation of a constitutional right. See Bruneau v. South Kortwright Central School District, 163 F.3d 749, 755 (2d Cir. 1998). To state a claim under section 1983, Mr. Palumbo must allege that the

challenged conduct was attributable to a person acting under color of state law, and that such conduct deprived him of a right, privilege, or immunity secured by the Constitution or laws of the United States. See Charles v. Maul, 214 F.3d 350 (2d Cir. 2000).

As reiterated in Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 164 (1993), a civil rights claim is subject only to the notice pleading requirements of Rule 8. 1 That said, plaintiff's Amended Complaint must still state a claim under section 1983 in order to survive a Rule 12(b)(6) motion. It is well-settled that respondeat superior is not a sufficient predicate for liability on the part of a municipality or a municipal officer. See Monell v. Dep't of Social Services, 436 U.S. 658 (1978). Instead, "personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under section 1983." Colon V. Coughlin, 58 F.3d 865, 873 (2d Cir. 1995).

Mr. Palumbo's Amended Complaint seeks to impose liability on municipal officials for constitutional violations allegedly committed by members of numerous municipal police and fire departments, without the requisite allegation of personal involvement. He relies on the doctrine of respondeat superior to connect these defendants to the constitutional violations alleged in his complaint, but as discusse3d above, such an allegation is insufficient to state a claim under section 1983. As Mr. Palumbo's Amended Complaint fails to allege any personal involvement on the part these municipal officials in any constitutional violations that allegedly occurred, the federal claims against the following defendants are therefore dismissed: Bridgeport Mayor Joseph Ganim (Amended Complaint at p. 9 par. 5, alleging that Ganim was responsible for actions of Bridgeport police officers attempting to arrest plaintiff at the Meat Barn" [a]s Respondeat Superior"); Bridgeport Police Chief Thomas Sweeney (Amended Complaint at p.11 par. 6, stating the "[t]he plaintiff also claims the same allegations as stated above for defendant Joseph Ganim, as they apply directly to the Chief of Police Sweeney" and alleging that

1 The Court therefore rejects the suggestion proposed by some of the defendants that it hold plaintiff's complaint to a stricter pleading standard. See e.g. Doc. # 330 at 5. All of the cases cited by defendants in support of this suggestion pre-date Leatherman. See Alfaro Motors, Inc. v. Ward, 814 F.2d 883 (2d Cir. 1987); Koch v. Yunich, 553 F.2d 80 (2d Cir. 1976); Wade v. Carey, 503

Bridgeport police attempted to "place" stolen goods in his hands); former First Selectman for the Town of Fairfield Paul Audley (Amended Complaint at p. 4 par 2, alleging that plaintiff received a letter from Audley, and that "[a]s Respondeat Superior, Paul Audley is responsible for the actions of the police department.") ; former Greenwich First Selectman Thomas Ragland (referred to as "Haggland" in the Amend Complaint) (Amended complaint at p. 7, par 4, alleging that " [i]n the performance of the defendants duties, As First Selectman, Thomas Haggland is the Respondeat Superior," and that "as a respondeat superior Thomas Haggland is responsible for the actions of his police department"); West Haven Mayor Richard Borer (Amended Complaint at p. 31 par 16, alleging that "as the Mayor, H. Richard Borer is the Respondeat Superior," and alleging no personal involvement on the part of Borer in various incidents connected to a West Haven dance studio). These defendants' motions to dismiss are accordingly GRANTED.[2]

Plaintiff does not rely on respondeat superior to make his claims against all defendants; some of his counts do allege, at least superficially, personal involvement on the part of particular defendants. See, e.g., Amended Complaint at p.6, par. 3 (alleging That the former Fairfiedl Chief of Police "conducted unreasonable Searches of the plaintiff on a daily basis for several years.")

---

2 As indicated above, the remaining defendants were instructed to file their motions to dismiss "no later than July 30, 2000." Doc. #302. Despite this clear directive, defendants Borer and Kelly's motions were docketed August 10, 2000, and defendant Johnson" motion was docketed August 21, 2000. The se defendants provide no explanation for their late filings, nor did they seek leave to extend. While the Court does not condone such cavalier disregard of court-imposed deadlines, given that the three filings that the Court has construed as the final operative Amended Complaint totaled 63 pages of claims against 26 different individuals, the Court will extend some leniency to defendants' efforts to sort out plaintiff's claims. The Court accordingly will consider these motions, despite their unexplained untimeliness.

Plaintiff cannot survive a motion to dismiss, however, simply by stating legal conclusions as if they were facts. See, e.g., Papasan v.Allain, 478 U.S. 265, 266 (1986) ("Although for the purposes of this motion to dismiss we must take all the factual allegations in the complaint as true, we are not bound to accept as true a legal conclusion couched as a factual allegation.") In re American Express Co. Shareholders Litig. (Lewis v. Robinson, 39 F.3d 395, 400-01 n. 3 (2d Cir. 1994) ("conclusory allegations of the legal status of defendants' acts need not be accepted as true for the purposes of ruling on a motion to dismiss." The Court, therefore, will not accept merely plaintiff's characterizations of unspecified incidents as "unreasonable searches" absent some factual support for that claim. Upon review of plaintiff's complaint, it is apparent that what Mr. Palumbo considers an unreasonable search is often noting More than being observed by the West Haven Fire Department when he walked by on his way to dance classes, See Amended Complaint at p. 18 par 9, being caught in traffic occasioned by the passage of several emergency vehicles, see Amended complaint at p. 21, or observing police at a diner near his dance studio. see Amended Complaint p. 33 par. 17. There is no factual basis alleged that would allow the Court to infer that plaintiff was ever seized or searched by any of the defendants, within the meaning of the Fourth Amendment.

At most, plaintiff's Amended Complaint alleges that he was the subject of surveillance by a number of police and fire departments on various occasions. While replete with details regarding the various locations at which the plaintiff observed police and emergency vehicles, the Amended Complaint fails to allege any specific instances of any defendant's surveillance, describe the length of such alleged surveillance, or indicate how his observation of police vehicles constituted illegal surveillance. In these circumstances, plaintiff has failed to state a claim for a violation of the Fourth Amendment by police surveillance in public places. See United States v. Lace, 669 F.2d 46 (2d Cir. 1982) (surveillance by police of suspect's home with high-powered telescopes for three week period, Twenty-four hours a day, did not violate Fourth Amendment); United States v . Santana, 427 U.S. 38,42 (1976) (a suspect exposed to public view through an open doorway, even at home, cannot claim a protected privacy interest that triggers the warrant requirement).

The Amended Complaint therefore lacks a cognizable legal theory, requiring dismissal of the surveillance claims under Rule 12(b)(6). See Vasu v. Tremont Advisosrs, No. 3:98CV1705 (SRU), 2001,WL43774 (C. Conn. January 9, 2001 ("Under Rule 12(b)(6), a court may dismiss a claim for either (1) the lack of a cognizable legal theory; or (2) the absence of factual assertions to support a claim."). The claims against the following defendants alleging illegal surveillance are dismissed: former Fairfield Police Chief Ronald Sullivan (Amended Complaint at p.6 par. 3, alleging surveillance; that the Fairfield and Westport police department "conducted a full scale war" against the plaintiff, and that Sullivan conducted "unreasonable searches on a daily basis for several years" because "plaintiff could not leave his home without coming in contact with the Fairfield Police."); Fairfield Chief of Police Joseph Sambrook (Amended Complaint at p. 12, par. 7 alleging that plaintiff was searched when members of the fire department "waited) for the plaintiff to pass by on the way to the Dance Studio" and when West Haven Fire Department "purposefully blocked entrance to the Dance Studio,"); West Haqven police Chief Michael Kelly (Amended Complaint at p. 33, par 17, alleging that West Haven police car

---

3 Plaintiff's claim against Sambrook also alleges that the Fairfield and Westport police unlawfully obtained copies of his photographs that he had dropped off at Photo Quick or other film developing studio. See Amended complaint at p. 14 par. 7 ("Anytime the plaintiff went to Photo Quick, the Fairfield Police would go to the phone diagonally across the street and call Photo Quick, and request a copy of the photographs" and "therefore the plaintiff had gone to other places to have film developed, however the police of SNET, or any other police operatives would follow the plaintiff."). Such seizure could possibly fall within the ambit of the Fourth Amendment. See, e.g., Wabun-inini v. Sessions, 900 F.2d 1234 (8th Cir. 1990) (seizure of photographs from developing store did not violate Fourth Amendment, where pictures were developed behind plexiglass viewing window, but declining to answer question "whether customers of photo processors, in general, lose their expectations of privacy in film and photographs left for development by virtue of conveying their property into the hands of a third party."). As there is no allegation that Chief Sambrook was personally involved in these incidents, however, but is instead alleged to be liable for surveillance, the claims against him can be dismissed without reaching the question of constitutional validity of any such alleged seizures.

Would come to a diner that plaintiff frequented after dance class, and that police officers would be present at other diners where plaintiff had meals); former Greenwich Police Chief Kenneth Moughty (Amended Complaint at p. 15 par 8, alleging that defendant had plaintiff under surveillance "any time the plaintiff went to Greenwich and is responsible for conducting unreasonable searches of the plaintiff, " and referring to incident where unidentified Greenwich officer stopped at a service station on Round Hill Road; former Greenwich Fire Chief Noel Padden (Amended Complaint at p.29 par. 15, alleging that defendant "conducted unreasonable searches of the plaintiff when plaintiff "C[ame] in contact with several Greenwich Fire vehicles." On his way to purchase Hose Menders); former Fairfield Fire Chief Daniel Gardiner (Amended Complaint at p. 25, par 13 alleging that defendant "conducted unbelievable searches of the plaintiff during the day and all hours of the night," referencing a fire on the Merritt Parkway that was observed by the plaintiff, and that was "started by the Fairfield Fire Department, just to conduct a unreasonable search," and alleging that Fire department denied plaintiff his liberty "by blasting their sirens during all hours of the day and night"). The motion to dismiss of these defendants are therefore **GRANTED.**

Plaintiff also seeks damages from Richard Gough, the fire chief of Westport for constitutional violations allegedly occurring on September 4, 1996, when the plaintiff left the Westport Dance Center and encountered a number of fire vehicles. Plaintiff alleges that "[t]he sight was almost unbelievable, fire vehicles were all over the place, sirens blasting, and lights flashing," and that due to the presence of the fire vehicles "[s]everal vehicle (sic) in front of the plaintiff were driving at a slow rate of speed to obstruct the passage way of the plaintiff." Amended Complaint at p.21 par 11. Plaintiff concludes tdhat "the defendant conducted an unreasonable search of the plaintiff," and that "the deprivation of liberty started in the Town of Westport." No facts alleged, however, connect Chief Gough to the September 4, 1996 incident involving fire vehicles, or the traffic resulting therefrom

Further, even assuming that a fire vehicle with its lights Flashing and siren sounding could constitute a sufficient show of authority to trigger the protections of the Fourth Amendment, see Graham v. Connor, 490 U.S. 396, 395 n. 10 (1989), a person is only seized within the meaning of the Fourth Amendment " if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." United States v. Mendenhall, 446 U.S. 544 (1980) . Mr. Palumbo does not allege that he was forced to stop by the fire vehicles, much less that the firefighters engaged in any conduct that could be considered coercive. See United States v. Lee 916 F.2d 814 (2d Cir. 1990) (to determine whether seizure occurred, Court must examine "overall coercive effect" of police conduct, and identifying several factors that might suggest that s seizure has occurred, such as the threatening presence of several officers; the display of a weapon, physical touching of the person buy the officer was compulsory; prolonged retention of a person's personal effects; and a request by the officer to accompany him to the police station). Rather, the most the Amended Complaint alleges is that he was forced to drive slowly because other cars slowed in the presence of fire vehicles – an accommodation which, without more alleged, shows compliance with state law. See Conn. Gen. Stat section 14-283 (requiring vehicle operators to pull over at the "immediate approach" of an emergency vehicle using its siren and lights, and imposing penalties for obstructing or retarding the passage of such vehicles). Being forced to slow or stop for emergency vehicles cannot, as a matter of law, constitute a seizure prohibited by the Fourth Amendment, absent any other indication that the actions of the firefighter were in any way coercive to the plaintiff. Chief Gough Motion to Dismiss the federal claims against him is therefore GRANTED.

2. Liability for Constitutional Violations: Private Actors

Plaintiff also brings claims against a number of private individuals, including Bernard Marcus, the Chairman of Home Deport U.S.A.; Paul Lypole, the Divisional Vice President of Office

Max; Peter Carini, the president of Hoffman Fuel Oil, David Saad, the owner of Sport Hill Service Station in Fairfield, and Sylvester Cocivi. As was the case with the municipal officials discussed above, in each count against these individuals plaintiff alleges that he seeks to redress " the deprivation of rights secured him by the Fourth And Fourteenth Amendments to the United States Constitution. . . Amended Complaint at par. 2 19, 27. The Fourth Amendment proscription against unreasonable searches and seizure applies only to government action, however; "it is wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the government or with the participation or knowledge of any government official." United States v. Jacobsen, 466 U.S. 109, 113 (1984) See also Perez v. Sugarman, 499 F.2d 761, 764-65(2d cir. 1974) (proscriptions of the Fourteenth Amendment generally do not extend to private conduct, but "conduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action."). The Court will therefore assess plaintiff's allegations to determine whether he has sufficiently stated a constitutional violation on the part of the private individuals sued.

As for Bernard Marcus, plaintiff's Amended Complaint contains no factual allegations connecting him or other Home Deport employees to the actions of the police; Mr.Palumbo simply claims that "a surveillance was conducted by the Home Depot Store employees," and that on occasions when he visited the Fairfield Home Depot store, a police or a fire truck is alleged to have arrived in the parking lot. Amended Complaint at p. 3. par. 2. Liability on the part of any Home Depot employees cannot be predicated on such thin allegations. Further, even assuming that the coincidence of timing in the arrival of a police or fire vehicle was sufficient to allege some sort of collaboration between Home Depot employees and the police, Mar. Marcus is not alleged to have any personal involvement in such conduct; in fact, he is only alleged to be liable by virtue of his position as Chairman of Home Deport. As discussed at length above, section 1983 does not allow supervisory officials to be held

liable for alleged unconstitutional acts of subordinates solely under a theory of respondeat superior. Defendant Marcus' motion to dismiss is therefore GRANTED.

The claims against defendant Lypole are similarly deficient. See Amended Complaint atg p. 19, par 10. Plaintiff alleges that Lypole "conducted unreasonable searches of the plaintiff when ever (sic) the plaintiff went into the Office Max store," and that Office Max employees collaborated with the Fairfield Police by notifying the police whenever he entered the store, and by picking up ;and reading the documents that plaintiff was photocopying there. Id., 20. The only connection alleged, however, between Office Max store," and that Office Max employees collaborated with the Fairfield Police by notifying the police whenever he entered the store, and by picking up and reading the documents that plaintiff was photocopying there. Id., p.20. The only connection alleged, however, between Office Max and the police is plaintiff's statement that he "knew these [Office Max] employees were with the police department, trying to find out information," and his conclusory assertion that "[t]he police Were obviously conducting an unreasonable search of the plaintiff with the cooperation of the Office Max Stores." Id. Even assuming that these bare allegations are sufficient to allege that the office Max employees were acting on behalf of the police, or with their participation or knowledge, Mr. Lypole is not identified as playing any part in the alleged police collaboration. If Mr. Lypole is to be considered s state actor for purposes of the Fourth Amendment, the same degree of personal involvement required to implicate a municipal official in constitutional violations must be alleged. The Amended Complaint contains no allegation that Mr. Lypole was directly involved in the alleged unreasonable searches, that he failed to remedy any alleged wrongs after learning about them, that he created a "policy or custom" at Office Max pursuant to which the alleged violations occurred, or that he was grossly negligent in supervising other Office Max employees, See Colon, 58 F.3d at 873 (listing ways that personal involvement of supervisory official may be established). The allegations against Lypole are wholly insufficient to meet this standard, and accordingly the claims against him are dismissed.

According to the Amended Complaint, defendant David Saad leases the Sporty Hill Service Station from Anthony Colonese, the former first Selectman of Easton and a cousin to Buster Cocivi. The Amended Complaint alleges that plaintiff purchased oil and gas from Saad's service station three or four times a week, and that Saad Would call the police upon his departure. Amended complaint, par 14, p. 28. Because "[e]verybody worked with and cooperated with Buster Cocivi, who had personal contacts with the Chief's of Police," Id., and because Fairfield Taxi, alleged to be cooperating with the police, "came in the direction of the plaintiff" whenever Saad called them, Saad is alleged to have cooperated with the police to conduct unreasonable searches of the plaintiff." Id., The remainder of the allegations against Saad include directing his employees "to walk around the neighborhood in a military strut," depriving the plaintiff of "his freedom and liberty," and doing "whatever they possibly could to disrupt the plaintiff's life." Id. at p.29.

Even liberally construed plaintiff's complaint does not state a claim cognizsable in federal court. Assuming argument that Saad's alleged actions in calling the police constituted sufficient entwinement to require treatment as a "state actor" for Fourth Amendment purposes, in response to such calls the police allegedly would only"c[o]me in the direction of the plaintiff." As discussed above being observed by the police or even being subject o surveillance by the police to the extent alleged in plaintiff's Amended Complaint does not rise to the level of a constitutional violation. Accordingly, defendant Saad's motion to dismiss is GRANTED.

Peter Carini, the president of Hoffman Fuel Oil, is not alleged to have to have cooperated with the police, except to the extent that Hoffman Fuel Oil trucks "were operated by the Fairfield Police Detectives." Amended Complaint (Doc. #274) at p. 7. According to the Amended Complaint, plaintiff observed Hoffman Fuel Oil trucks on numerous occasions and at various locations connected to the Fairfield Police. Id. Assuming these allegations to be true, and interpreting plaintiff's claim against Carini as alleging that the police utilized Hoffman Fuel oil trucks to conduct covert surveillance of the

plaintiff, the Amended Complaint still fails to state a congnizable constitutional violation, because as discussed above, mere surveillance on isolated occasions is insufficient to trigger the protections of the Fourth Amendment. Accordingly, the federal claims against defendant Carini are dismissed.[4]

Finally, defendant Sylvester (Buster) Cocivi seeks dismissal of the claims against him. While the Amended Complaint again references The Fourth and Fourteenth Amendment Amendments, the only connections to state action in the claims against Cocivi are an incident where an Easton police officer witnessed an exchange between plaintiff and Cocivi, and a reference to a meeting attended by a police officer where plaintiff and Cocivi discussed Cocivi's refusal to pay the plaintiff for services he had performed. Amended Complaint at p. 23, par 12. The Amended Complaint further alleges that Cocivi is "associated" with a number of different Chiefs of police, that police officers were "impressed" by Cocivi, and that Cocivi "was responsible for this (sic) unreasonable search of the plaintiff." The Amended Complaint is devoid of any specific facts or circumstances supporting the assertion that Cocivi caused a search of the plaintiff." The Amended Complaint is devoid of any specific facts or circumstances supporting the assertion that Cocivi caused a search of the plaintiff, much less that such a search occurred. "A complaint which consists of conclusory allegations unsupported by factual assertions fails even the liberal standard of Rule 12(b) (6)." DeJesus v. Sears, Roebuck & Co., 87 F3d 65 (2d Cir. 1996). Interpreting plaintiff's claim as advancing a theory that Cocivi used his influence over and associations a with various police officers to enlist their aid in his payment dispute with the plaintiff, nothing

---

4 Defendant Carin's motion to dismiss was filed one week after July 30, 2000, the date set by the Court as the final date for all such motions. See Doc. #302. for the reasons outlined in note 2 above, the Court will nonetheless consider this motion on its merits. Defendant also Carini filed a counter claim against Mr. Palumbo along with his Answer to the Complaint on December 14, 1998 (Doc #118). On motion of the plaintiff, Mr. Carini was ordered to post a bond in the amount of $500 on this counter claim pursuant to local rule 8(a). The Order dated September 30, 1999, directed Mr. Carini to post such bond within 30 days. A review of the docket sheet indicates that no such bond was ever posted. Accordingly, defendant Carini's counter-claim is DISMISSED.

appears to have happened to Mr. Palumbo as a result of this alleged Collaboration. His characterization of Cocivi's actions as causing an unreasonable search is insufficient, particularly given the context of the Amended Complaint, where plaintiff often seems to mistake being observed by a police official for a search in violation of the Fourth Amendment. See First Nationwide Bank v. Gelt Funding Corp., 27 F.3d 763, 772 (2d Cir. 1993) ("Courts do not accept conclusory allegations on the legal effect of the events plaintiff has set out in these allegations do not reasonably follow from his description of what happened.") Even assuming the allegations in the Amended Complaint regarding Cocivi's connections to various Police and fire departments to be true, and even assuming that these connections could be sufficient to transform his private actions into state action for purposes of the Fourth Amendment, plaintiff still fails to state a cognizable constitutional claim against Cocivi, because nothing in the Amended Complaint sufficiently alleges that a constitutional violation ever occurred. The federal claims against Cocivi are accordingly dismissed.

3. State Law Claims

The Court has dismissed all of the constitutional claims raised by the plaintiff under the Fourth and Fourteenth Amendments. Plaintiff also brings numerous state law claims against the various defendants alleging negligence, intentional and negligent infliction of emotional distress, and breach of contract. Although he cites the diversity jurisdiction statute 28 U.S.C. Section 1332, in his Amended Complaint, it is apparent that all the defendants in this case are residents of Connecticut, as is the plaintiff. The only basis for this court's jurisdiction over his state law claims, therefore, is the supplemental jurisdiction statute, which gives the Court jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. Section 1367 (a). Pursuant to 28 U.S.C. section 1367 (c) (3), however, this Court may decline to exercise supplemental jurisdiction if all claims over which it had original jurisdiction are dismissed.

In making the determination of whether to exercise supplemental jurisdiction over remaining state law claims, a district court is to weigh and balance certain factors, including considerations of judicial convenience, economy and fairness to the litigants. See Ametex Fabrics, Inc., v. Just In Materials, Inc., 140 F.3d 101, 105 (2d Cir. 1998), citing Purgess v. Sharrock, 33 F2.d 134, 138 (2d Cir. 1994). The Second Circuit has observed that "when all federal claims are eliminated in the early stages of the litigation, the balance of factors generally favors declining to exercise prudent jurisdiction over remaining state law claims and dismissing them without prejudice." Tops Markets, Inc. v. Quality Markets, Inc., 142 F.3d 90, 102-03 (2d Cir. 1998). Because the Court has dismissed all claims over which it had original jurisdiction prior to the commencement of discovery, the Court exercises its discretion to decline supplemental jurisdiction over plaintiff's state law claims, and dismisses them without prejudice.

4. Additional Defendants

In this Court's previous Ruling on the motions to dismiss that granted plaintiff leave to amend his Complaint, plaintiff was instructed that he could not file claims against certain defendants who had been dismissed previously on other grounds. Doc #233 p.4. Nonetheless, the three filings that the Court has construed as the final operative Amended Complaint contain references to these defendants, and seek damages against them. The Court declines to reinstate the claims against these defendants, and accordingly the dismissals that were previously entered remain in force as to the following defendants: Mark Barnhardt, Roger L. Macey, Robert Mossman, Frederick Lisman, Thomas Flaherty, William Chiarenzelli, Warren Joblin, Daniel Miglio, Hank MCInerneyh, John Solomon, and David Buchanan. As two of these defendants had sought to ensure their dismissal by filing a supplemental motion to dismiss (Doc. #323, is DENIED as moot.

5. Remaining Motions

Plaintiff has filed a number of additional motions for leave to supplement and amend the original complaint. See Docs. #358, #360, #366. In the previous ruling approving and adopting

Magistrate Garfinkel' Recommended Ruling on the Motions to Dismiss, Doc. #302, this Court afforded plaintiff "one final opportunity to file an amended complaint" that would meet the deficiencies laid out in that Ruling. That ruling was very clear that plaintiff would be given no further opportunities to amend his Complaint. Plaintiff attempts to skirt the unequivocal statement in the prior Ruling by arguing that subsequent events make it necessary to amend his allegations and add new parties. The Court will not convert this lawsuit into a "work in progress," and leaves plaintiff to an appropriate separate action to remedy ~~these alleged~~ constitutional violations. Moreover, the court notes that the allegations in these documents refer to matters beyond the jurisdiction of this Court. See Doc. #360 (probate); Docs. #358 #366 (state court partition action). Plaintiff's Motions to Amend and Supplement the Complaint are therefore DENIED.

The remaining motions seek to compel and/or order sanctions against individuals or entities who are either no longer defendants in this case, or who never were parties. See Doc. #362 (Motion to Compel directed to Frances Palumbo and Darren Palumbo dismissed by Order dated June 2, 2000, Doc. #302); Doc. #352 (Motion for Sanctions directed at non-defendants town Fairfield, Fairfield Police Department, and Counsel of Record"); Doc. #354 (Motion for Sanctions directed at defendants Barnhardt, Mossman, and Macey, dismissed for insufficient services in Ruling dated Sept. 28, 1999, Doc. #233). These motions are therefore DENIED as moot.

Conclusion

The following motions to dismiss are GRANTED: #308 (defendant Saad), #324 (defendants Ganim and Sweney), #326 (defendant Lypole), #329 (Defendants Audley, Sullivan, Sambrook and Gardner), #331 (Defendant Marcus), #334 (Defendant Gough), #336 (Defendants Padden, Ragland and Moughty), #338 (Defendant Cocivi), #342 (Defendant Carini), #345 (Defendants Borer and Kelly), and #348 (Defendant Johnson). Defendant Carini's counter-claim (Doc. #118 is DISMISSED. Defendants Flaherty and

Lisman's Motion for Judgment of Dismissal (Doc. #323) is DENIED as moot. Plsaintiff's Motion for Leave to Supplement and Amend the Origianl Complaint (Docs. #357, #358, #360, and #366) are DENIED. Plaintiff's Motion for Preliminary Injunctive Relief and his Motion to Transfer Case (Docs. #361, #363) are DENIED as moot. The Clerk is directed to close the case.

IT IS SO ORDERED

"S/_____",
Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut this 20th day of March, 2001

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANK D. PALUMBO,
Plaintiff,

VS.

NO.3:98CVO1411(JBA)

FILED
AUG 9 4 03 PM '01
U.S.DIST. COURT
NEW HAVEN,CT.

SANFORD I. WEILL; JOSEPH PETRO; THOMAS UNTERBERG; DERYCK MAUGHN; ZUHARE TABARRA; JAMES TURRENTINE; PETER WADS, a.k.a. ARTHUR MACKEY; DAVID GUGGENHEIM; WILLIAM KRELIK; LEE A. IACOCCA; DONALD CATA; JOAN WEILL; WILLIAM CHAIRENZELLI; RICHARD S. GOUGH; PAUL AUDLEY; RONALD SULLIVAN; JOSEPH SAMBROOK; DANIEL GARNER; THOMAS RANGLAND; KENNETH MOUGHTY; DAVID H. BUCHANAN; NOEL PADDEN; JOSEPH GANIM; THOMAS I. SWEENEY; JOHN SOLOMON; MARK S. BARNHARDT; ROBERT MOSSMAN; ROGER .L. MACEY; H. RICHARD BORER; MICHAEL KELLY; WILLIAM JOHNSON; ROBERT H. RUSSELL, JR.; ANGELO TOSCANO; WILLIAM Von ZEHLE; FREDERICK L. LISMAN; THOMAS FLAHERTY; WILLIAM GRIZE; CARMINE IAPALUCCIO; DANIEL MIGLIO; BERNARD MARCUS; DAVID SAAD; SYLVESTER COCIVI, a.k.a. BUSTER COVIVI; MARGARET CASTELUCCI; PETER CARINI; FRANCES PALUMBO; DARREN PALUMBO; PAUL LYPOLE; HANK MCINERY; ROBERT J. EATON; CARY WYSOPAL; WILLIAM ROGERS, and WARREN JOBLIN,

Defendants,

Honorable Janet Bond Arterton

Appeal Date August 9, 2001

DEFENDANT, ANDREW DIJAK IS REMOVED FROM

CAPTION OF THIS NOTICE TO APPEAL

NOTICE OF APPEAL

1. Pursuant to F.R.A.P. 4(a)(1), the plaintiff, Frank D. Palumbo, hereby gives notice and appeals to the United States Court of Appeals for the Second Circuit from the following Judgment or Order:

FINAL JUDGMENT, (DOC. #370)

This matter came on for consideration on defendants' motions to dismiss before the Honorable Janet Bond Arterton, United States District Judge.

The Court has reviewed all of the papers in conjunction with the motions and on March 20, 2001, the Court entered a Ruling granting defendants Saad, Ganim, Sweeney, Lypole, Audley, Sullivan, Sambrook, Gardner, Marcus, Gough, Padden, Ragland, Moughty, Covivi, Carini, Borer, Kelly and Johnson's motions to dismiss. On June 2, 2000, a Ruling entered dismissing defendants Joblin, McInery, Buchanan, Lisman, Solomon, Barnhardt, Mossman, Macey, Miglio, Chiarenzelli, Flaherty, S. Weill, Petro, Unterberg, Maughn, Tabarra, Turrentine, Wads, Guggenheim, Krelick, Iacocca, Cata, J. Weill, Russell, Toscano, vonZehle, Rogers, Wysopal, Eaton, D. Palumbo, F. Palumbo, (the names of J. Palumbo, Gordon, White and Richardson were not listed in the original caption of the complaint, and should not be included.)

It is therefore ORDERED and ADJUDGED that judgment is entered for all defendants and the case is closed.

Dated at New Haven, Connecticut, this 21 day of March 2001.

KEVIN F. ROWE, CLERK

"/S_____"
By Betty J. Torday
Deputy Clerk

RULING ON PENDING MOTIONS DOC. #369

By Ruling dated September 29, 1999, this court approved and adopted Magistrate Judge Garfinkel's Recommended Ruling dismissing the claims against all defendants.

a. Standard Motion to Dismiss. Fed. R. Civ. P. 12(b)(6).
b. Standard for Fed. Ru.Civ. P. Rule 8(a) standard.
c. Discussion: of Liability for Constitutional Violations: Municipal Officials, Title 42 U.S.C. Section 1983.
c. Discussion: Liability for Constitutional Violations: Private Actors.
d. State Law Claims, Title 28 U.S.C. Section 1332, Title 28 U.S.C. Section 1367(c)(3).
e. Additional Defendants: Barnhardt, Macey, Mossman, Lisman, Flaherty, Chiarenzelli, Joblin, Miglio, McInerney, Solomon and Buchanan.
f. Remaining Motions. Motions to Dismiss Docs. #358, #360, #366, #362, #352 and #233, #324, #326, #329, #331, #334, #336, #338, #342, #345, #348, #357, #358, #360, #366, #352, #354, #362, #361 and #363.

2. The judgment/order in this action was entered on March 20 and 21, 2001.
3. The appeal is taken from the United States District Court, District of Connecticut to the United States Court of Appeals for the Second Circuit.

APPEAL OF POST JUDGMENTS

1. Order Granting Motion to Dismiss (Doc. #131), December 21, 1998.
2. Recommended Ruling Granting Motion to Dismiss (Doc. #199), May 5, 1999.

3. Recommended Ruling Denying Motion for Summary Judgment (Doc. #199) May 6, 1999.
4. Order Denying Motions, (Doc. #200), May 6, 1999.
5. Endorsement Order denying 207-1 (Doc. #210) June 4, 1999.
6. Recommended Ruling Granting Motion to Dismiss, (Doc. #219) August 27, 1999.
7. Endorsement Order Denying Motion for Entry of Default, Doc. #230), September 28, 1999.
8. Ruling Overruling ruling Objection. (Doc. 233), September 28, 1999.
9. Endorsement Order (See Ruling 284-1), (Doc.#300), June 2, 2000.
10. Ruling on Pending Motions (Doc. #302), June 2, 2000.
11. Endorsement Order denying motion for Intent to take Possession (Doc. #372), 4/401.

THE PLAINTIFF

BY "S/_____",

Frank D. Palumbo
P O Box 320123
Fairfield, Conn., 06430
203 218-9813

Appeal DateAugust 9, 2001.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY OARDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THE CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals For the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 18 th day June, two thousand two.

PRESENT:

Roger J. Miner
Jose A. Cabranes
Rosemary S. Pooler,
Circuit Judges,

UNITED STATES COURT OF APPEALS
FILED
JUN 18 2002
Roseann B. Mackechnie Clerk
SECOND CIRCUIT

FRANK PALUMBO
Plaintiff-Appellant,

v.

SANFORD I. WEILL, et al.
Defendant-Appelles.

Appeal from a judgment of the United States District Court for the District of Connecticut (Janet Bond Arterton, *Judge).*

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and is AFFIRMED.

Frank Palumbo, proceeding pro se, appeals from a March 20, 2001, order the United States District Court for the District of Connecticut (Janet Bond Arterton, *Judge*), granting various defendants' motions to dismiss the complaint and denying his various cross motions for leave to amend and supplement the complaint and for sanctions against various defendants and non parties. Appellee Sylvester Cocivi moves to dismiss the appeal.

We affirm for substantially the reasons stated in the District Court's March 20, 2001, Ruling on Pending Motions. See *Palumbo v. Weill,* No. 3:98cv1411, slip op. (March 20, 2001). Cocivi's motion to dismiss the appeal is dismissed as moot.

For the Court,
Roseann B. MacKechnie, Clerk

By "S/_____",
Lucille Carr

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLERY SQUARE
NEW YORK 1007

ROSEANNB. MACKECHNIE
CLERK

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, In the City of New York, on the 30th day of July two thousand two.

Present:

Hon. Roger J. Miner,
Hon. Jose A. Cabranes,
Hon. Rosemary S. Pooler,
CIRCUIT JUDGES.

UNITED STATES COURT OF APPEALS
FILED
JUL 30 2002
ROSEANNB. MACKECHINE
SECOND CIRCUIT

PALUMBO

Docket No. 01-7942

V.

WEILL

A petition for panel rehearing having been filed herein by Appellant pro se, Frank D. Palumbo,
Upon consideration thereof, it is
Ordered that said petition be and it hereby is DENIED.

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk

By: "S/_____",
Arthur M. Heller,
Administrative Attorney